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L. Eng. A. 14. e. 82

~~Mr. J. M. K.~~

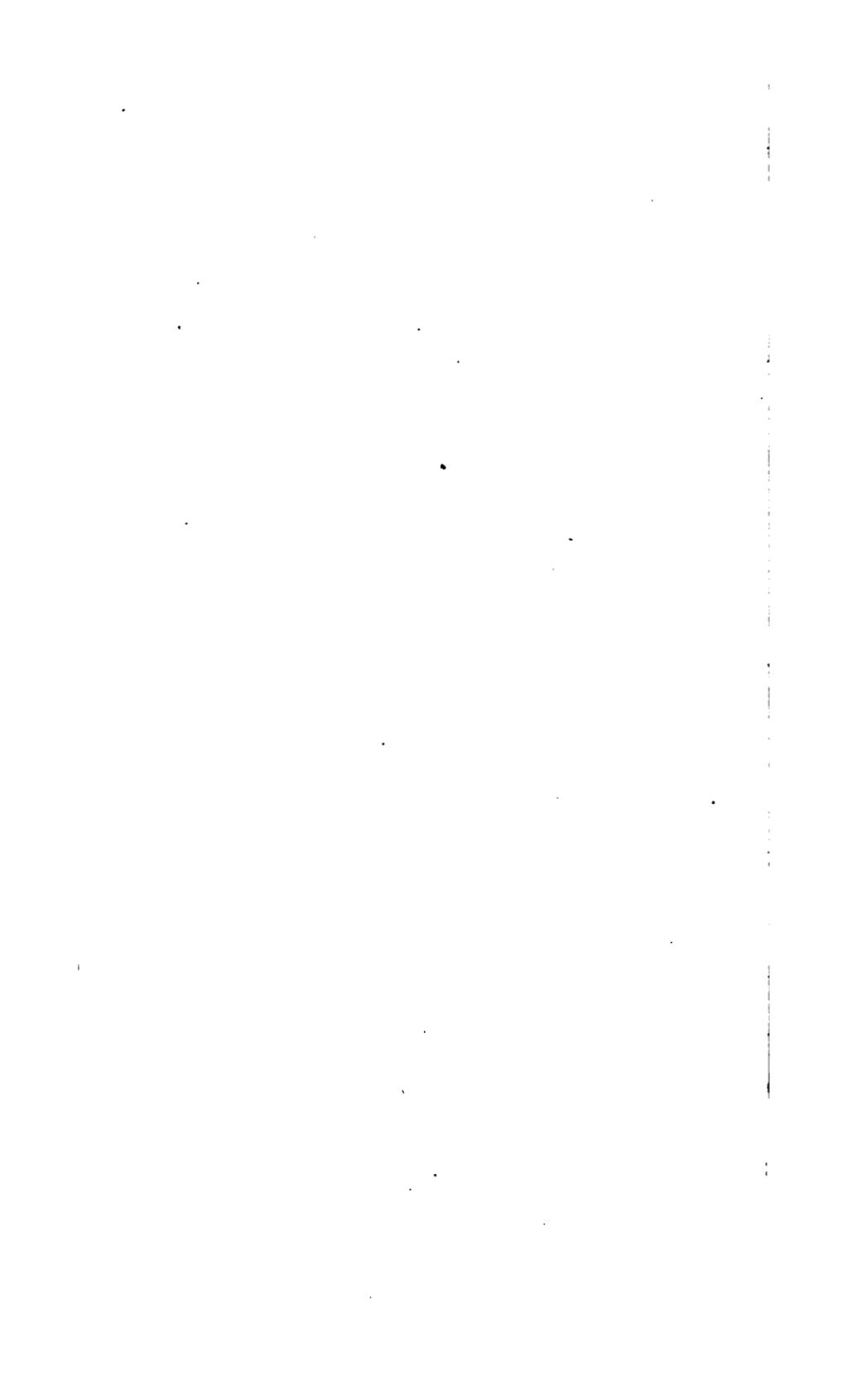
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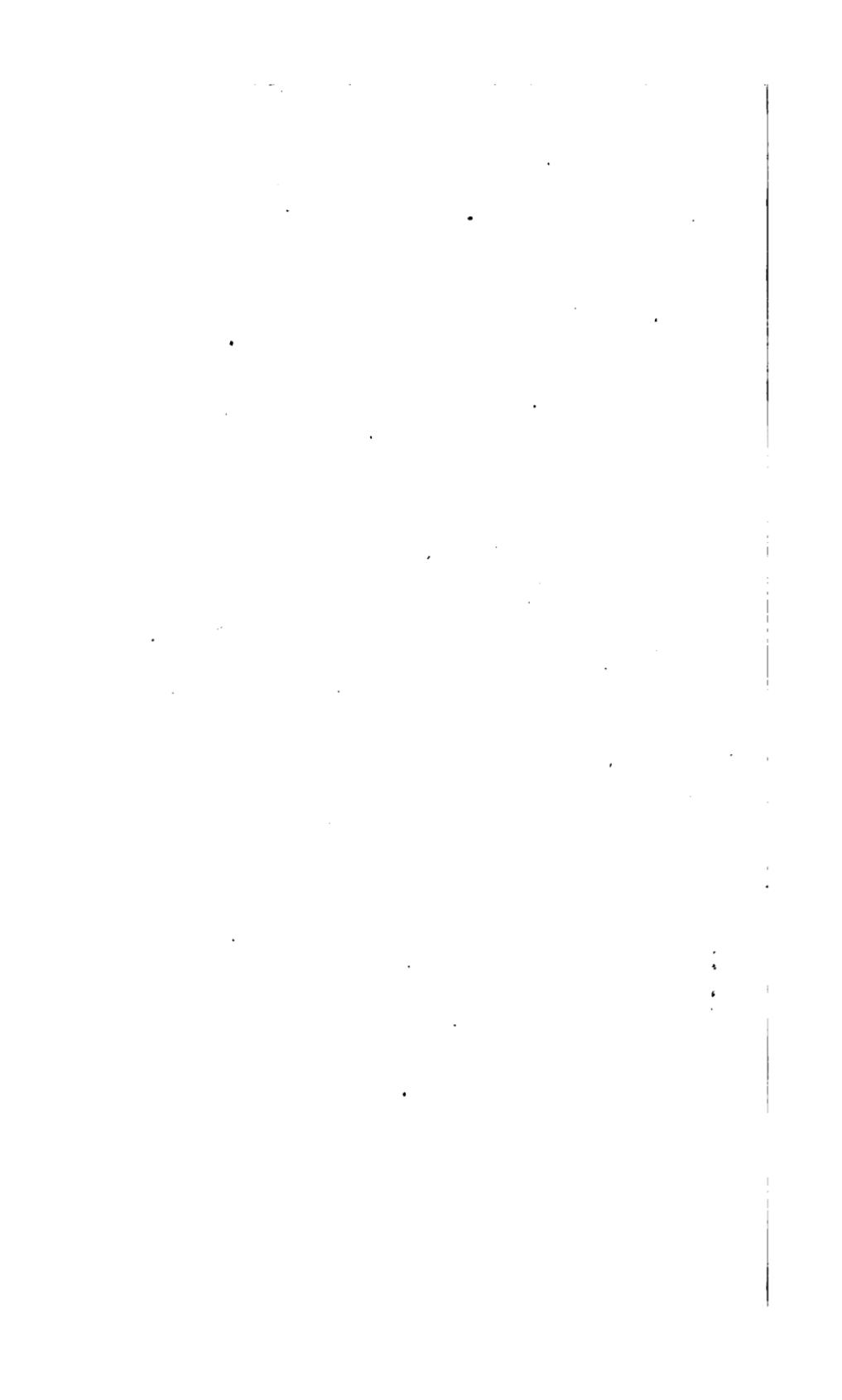
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AN ABRIDGMENT
OF
BLACKSTONE'S COMMENTARIES
ON
THE LAWS OF ENGLAND.



AN ABRIDGMENT
OF
BLACKSTONE'S COMMENTARIES
ON THE
LAWS OF ENGLAND,
INTENDED FOR THE USE OF YOUNG PERSONS, AND
COMPRISED IN
A SERIES OF LETTERS
FROM
A FATHER TO HIS DAUGHTER.

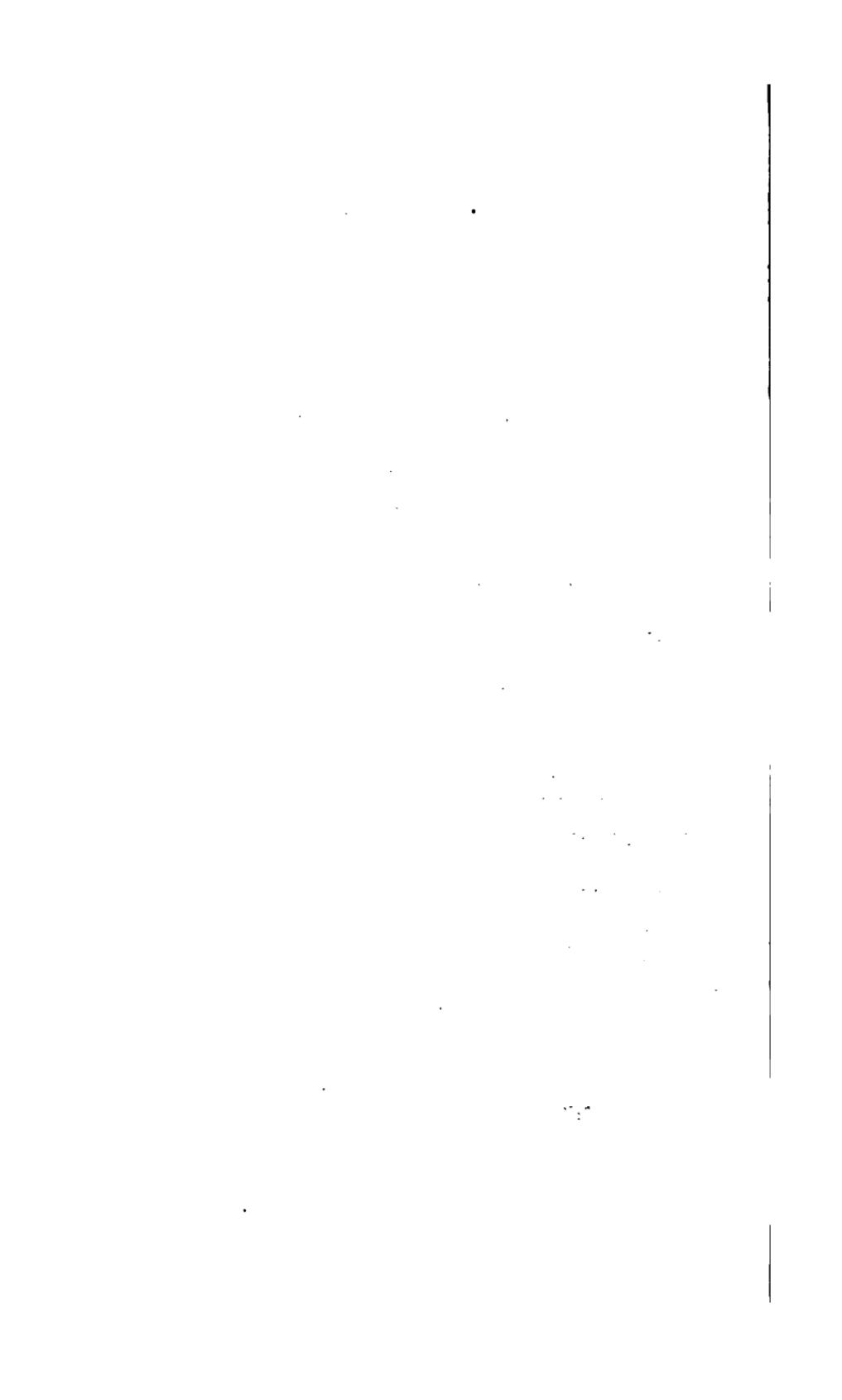
BY SIR J. E. EARDLEY-WILMOT, BART.,
BARRISTER-AT-LAW, FOR MANY YEARS CHAIRMAN OF THE WARWICKSHIRE SESSIONS,
AND LATE LIEUT.-GOVERNOR OF VAN DIEMEN'S LAND.

A NEW EDITION,
CORRECTED AND BROUGHT DOWN TO THE PRESENT DAY,
BY HIS SON,
SIR JOHN E. EARDLEY-WILMOT, BART.,
BARRISTER-AT-LAW, RECORDER OF WARWICK.

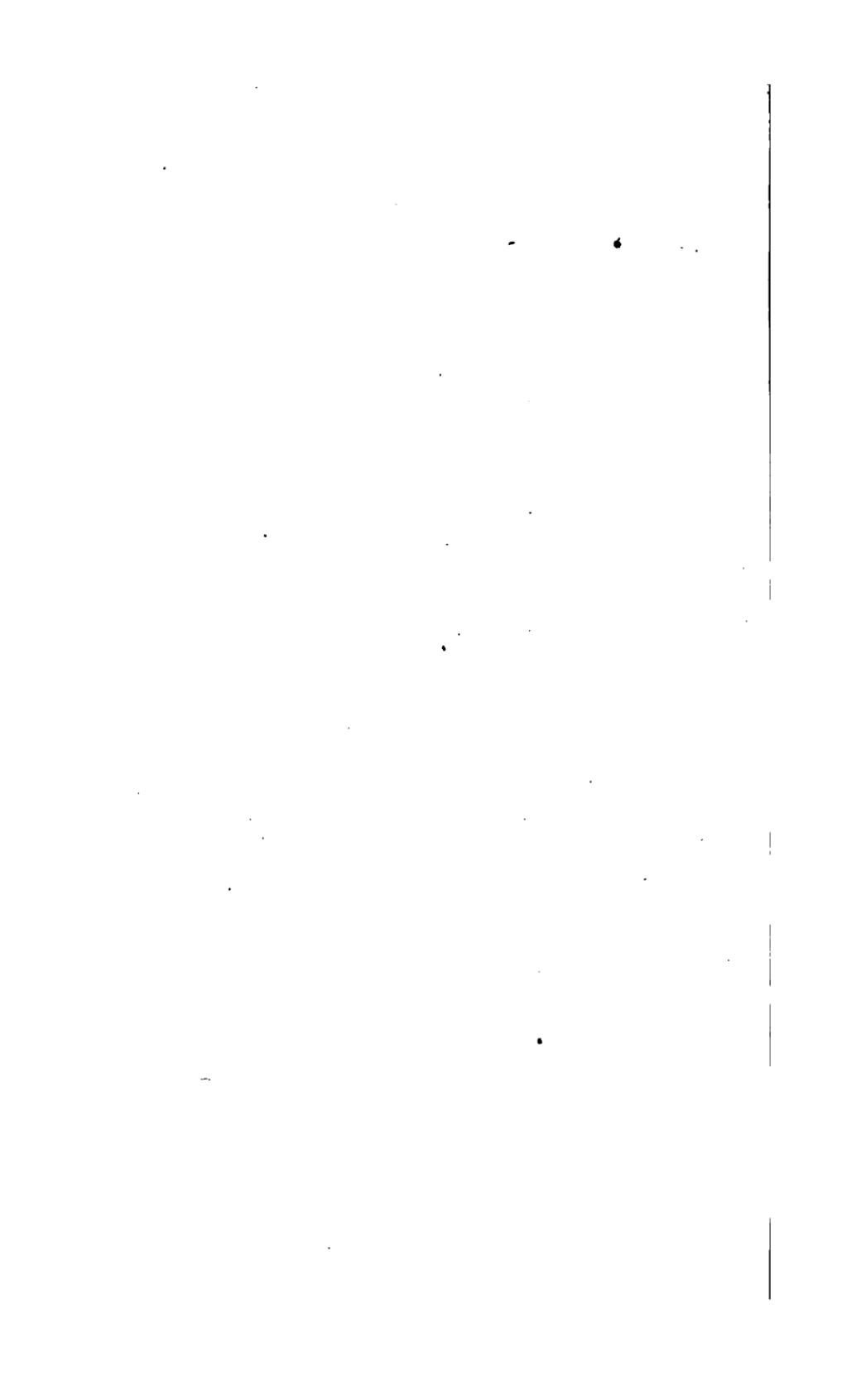
* * * * "Of Law, no less can be acknowledged, than that her seat is the bosom of God, her voice the harmony of the world: all things in Heaven and Earth do her reverence; the very least, as feeling her care, and the greatest, as not exempt from her power; both Angels and Men, and creatures of what condition soever, though each in different sort and manner, yet all with uniform consent, admiring her as the mother of their Peace and Joy." *Hooker's Ecc. Polity, Book I.*

LONDON :
LONGMAN, BROWN, GREEN AND LONGMANS.

1853.



TO
HER ROYAL HIGHNESS
VICTORIA ADELAIDE MARY LOUISA,
PRINCESS ROYAL,
THIS EDITION
OF AN
ABRIDGMENT OF BLACKSTONE'S COMMENTARIES
ON THE
LAWS OF ENGLAND,
THE MILD ADMINISTRATION AND IMPROVEMENT
OF WHICH HAVE DISTINGUISHED THE HAPPY REIGN OF
HER ROYAL HIGHNESS'S AUGUST PARENT,
IS, WITH PERMISSION,
MOST RESPECTFULLY INSCRIBED,
BY HER DUTIFUL AND OBEDIENT SERVANT,
JOHN EARDLEY EARDLEY-WILMOT.



PREFACE.

THE first edition of this Abridgment of BLACKSTONE'S COMMENTARIES was published in 1822, and although it met with a very general and rapid circulation, yet partly owing to the numerous Parliamentary avocations of its Author, interspersed with the pursuits and relaxation of a country life, and partly to the important changes of the Law in Criminal matters, as well as in those relating to the Franchise, which ensued soon afterwards, and were constantly going on in subsequent years, it was never republished.

I now give to the public a Second Edition, having made such corrections as have been called

for by the altered state of the Law, and having rewritten the Work in many parts, particularly in those Letters which treat of Public Wrongs, and in the 31st, which gives an account of the Origin, Progress, and Gradual Improvement of our Laws. This portion of the text of Blackstone appeared to me to have been abridged into too narrow a compass. I am responsible for the whole of the Letter on the Law of Evidence, a slight acquaintance with which I have thought might prove generally useful. Whatever criticism may be bestowed upon the concluding Letter must also fall to my share.

In adapting the Abridgment to the requirements of the present day, I am much indebted to the landmark afforded me by Mr. Serjt. Stephen's excellent edition of Blackstone's Commentaries,—a work most ably executed, and well deserving an attentive perusal as well by the Law Student, as by every other person who is desirous of becoming acquainted with the existing state of our juris-

prudence, and with those reforms, legal and political, which have taken place since Blackstone wrote.

The preparation of this little Book for the press has been to me “a labour of love,” not only because I have been enabled hereby to revive a memorial of the abilities and industry of one now no more, but because, in addition to this, I have professionally a sacred interest in the noble Work of Blackstone, from the fact of his having submitted his Commentaries to the perusal and correction of my ancestor, Lord Chief Justice WILMOT, before he sent them to the press. This reflection renders me the more anxious that the present edition of the Abridgment should not do injustice to the Great Original.

There has been always a complaint made that the elements of Constitutional Law have been rendered rugged and unattractive to the youthful student, but the style of Blackstone, lucid and

perspicuous as it is, is well calculated to obviate this objection; and wherever the altered state of the Law has rendered it necessary to introduce new materials into the Letters, the best endeavours of the Editor have been exerted to maintain those advantages which recommend the Commentaries to the general reader above every other Work on the subject of English Jurisprudence.

J. E. E.W.

*11, King's Bench Walk,
14th February, 1853.*

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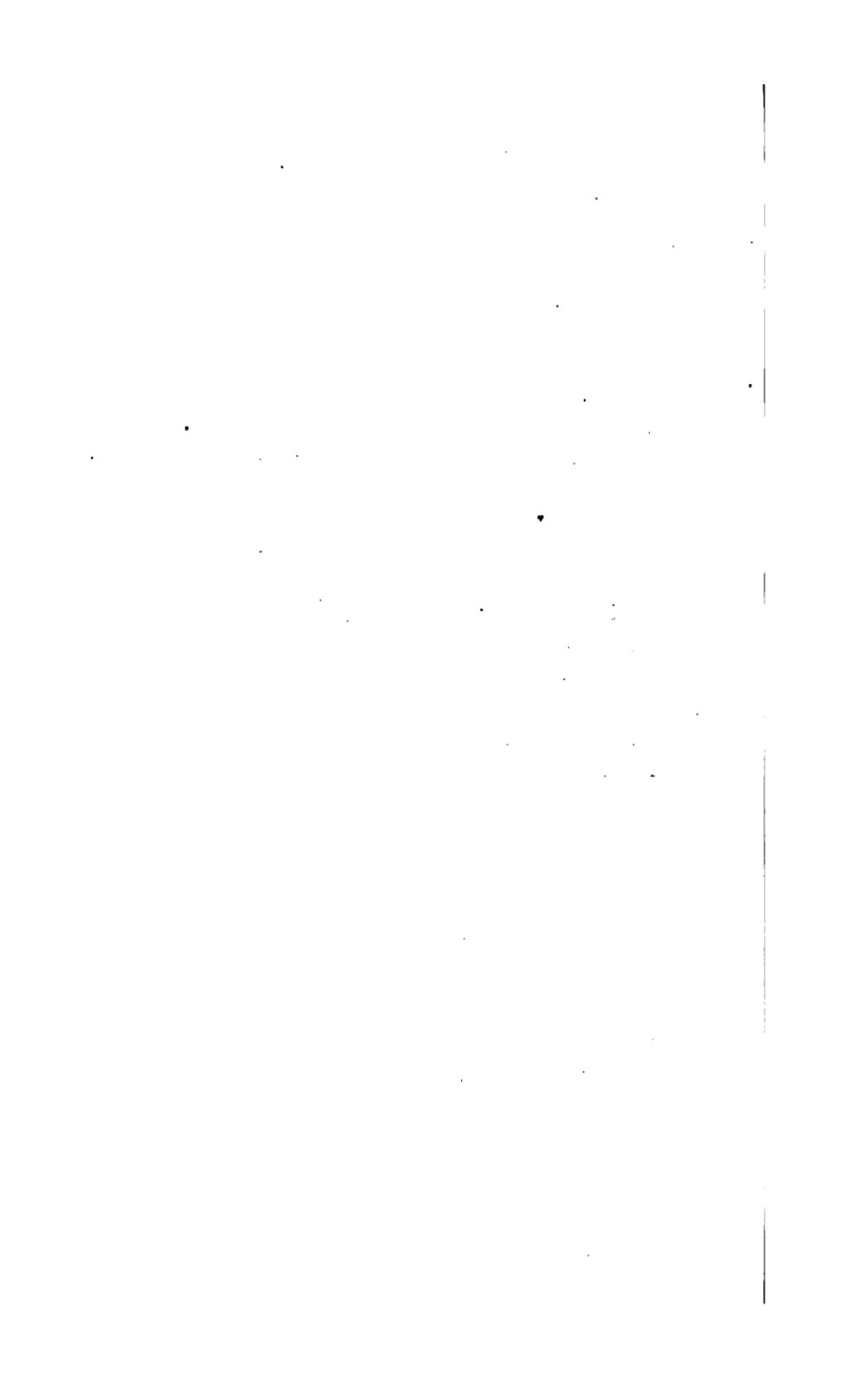
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AN ABRIDGMENT
OF
BLACKSTONE'S COMMENTARIES.

LETTER I.

ON THE STUDY OF THE LAW.

MY DEAR E.—.

IT is not unlikely, that many persons, who have never opened Blackstone's Commentaries on the Laws of England, will think that I am unreasonable in requiring a young lady to read a book, which treats of a subject apparently uninteresting and unintelligible. Believe me, those who have formed this opinion have adopted it without sufficient consideration. If the nice distinctions which regulate the law of property, and all that various and complicated knowledge, which the longest life of our most illustrious lawyers has

scarcely been able to attain ; if an acquaintance with all the Acts of Parliament which are annually passed, with the learned decisions of our Courts of Justice upon their construction ; if, in short, the line of education, which those who study the law as a profession pursue, were the objects I had in view in abridging these Commentaries for your instruction, then indeed I should be wasting your time in an unprofitable pursuit ; and I should in vain hope to afford you such amusement or advantage as would repay either of us for our labour.

Nothing however is farther from my intention : because, even if I succeeded, I should be inducing you with that species of knowledge from which you would not derive any practical advantage, and I should be wasting in an unprofitable pursuit that time which, at best, is seldom employed to the greatest benefit. I should moreover be making you a learned pedant in petticoats, which, next to a mere fine lady, is the most insufferable of companions ; and I should be drawing your attention away from those instructive and feminine pursuits, which will fortify your mind equally against the pleasures as against the miseries of life.

Whilst therefore I would avoid in female education the two extremes of pedantic learning and of mere superficial accomplishments, I would wish to adorn your mind with useful knowledge, and with such literary acquirements, as will eventually render you a cheerful companion and an accomplished

woman. It was with this view that you have been instructed in the Latin language; not to make you a Latin scholar, but to improve your knowledge of your native tongue, and to give you that readiness and elegance in English which can alone be obtained from the learned languages.

It is for a similar purpose that I intend to send you, in a Series of Letters, so much of the Commentaries on the Laws of England as I think are adapted to your understanding, as well as necessary to be known by every gentlewoman. I can safely pronounce, that with some exceptions, relating to professional and legal points, all the historical parts of the Laws of England are within the reach of any capacity; and you will find, in the course of this correspondence, that most of those subjects which I shall explain to you in *detail* will be recognised by you as interwoven in the history of your country, and of which you have had already *general* ideas.

The science, to which I wish to introduce you, is that of the constitution of your country, founded upon those laws which the virtue of our forefathers enacted for the public good, and which the wisdom of ages has sanctioned and approved. As the bonds of society became more intricate, new laws have been from time to time enacted, new restraints, and new rules of action have been gradually laid down, till at last a body of laws has been slowly and imperceptibly compiled which has become the support and ornament of this happy kingdom. A

competent knowledge of these laws is the proper accomplishment of every gentleman and scholar, and is not only an useful, but an essential part of a liberal and polite education. It is useful to all persons *generally*, because all are interested in the preservation of the laws, and because it is a duty incumbent on all to be acquainted with those obligations with which they are immediately concerned. It is useful to some in *particular*, because birth, fortune, and situation in life have given to them advantages, not only for the benefit of themselves, but also of the public: and who can, in any station of life, discharge properly his duty either to the public or to himself without some degree of knowledge in the laws?

Of this number are gentlemen of independent estates and fortune, the most useful and considerable body of men in the nation, who, if ignorant in this branch of education, would not only be deficient in an elegant acquirement, but would be exposed frequently to fraud and imposition. All gentlemen of fortune also are occasionally called upon to dispose of the lives and properties of their fellow creatures as jurors, to distribute justice as magistrates, and to enact laws as Members of Parliament; and thus to be the guardians of the constitution, the interpreters of the laws, and the dispensers of justice. How much will that magistrate be an object of contempt among his inferiors, and of censure among those to whom he is account-

able for his conduct, if through ignorance he mistakes, or through passion he abuses, his authority! How unbecoming in a legislator to vote for a new law, when he is utterly ignorant of the old!

What is said of gentlemen in general may be applied still stronger to the nobility; for they are the hereditary counsellors of the Crown and judges upon their honors of the lives and properties of their fellow subjects. Their sentence is final, decisive, and irrevocable: and to their decision, whatever it be, inferior courts of justice must conform.

There is no person, let his rank, fortune, or profession be what it may, but will derive at once amusement, instruction, and advantage from the knowledge of those laws under which he enjoys the blessings of protection and of impartial justice; and in proportion as he is conversant with that glorious constitution, which has become the envy and admiration of the world, so will he be inclined to support the government in Church and State, increase in affectionate loyalty to the Queen, in zeal for the liberty of his fellow creatures, in a sense of real honor, and in well-grounded principles of religion, and become, at the same time, a better subject and a better Christian.

It is the peculiar exemption, and I may say advantage, of the female sex to be relieved from all those cares and anxieties of public life, which begin with our earliest age, and end not but with

the close of our existence. You will be never called upon to take a part in those awful responsibilities to which the juror, the magistrate, or the legislator is constantly liable; and even in those acts relating to which the laws have laid down positive enactments, if you are not protected by the law itself from feeling the evils of your own imprudence, you have a father, a brother, or a husband, to assist, advise, or control you. To you, therefore, a knowledge of the laws and constitution of your country may not be so indispensably requisite, and you may pass through life, often without inconvenience, and generally without reproach, if you are ignorant of the institutions under which you live. But I need not impress upon you that all knowledge must be advantageous which renders you better informed and improves your mind and your heart, which affords materials for reflection, and opens an additional source of mental occupation and improvement. If, however, that knowledge is on a subject of every day occurrence; if it gives you an insight into those institutions, customs, and regulations which are constantly presenting themselves to your notice; if it explains satisfactorily what otherwise would be confused, and exposes in genuine simplicity what otherwise would be clothed in darkness and mystery; then indeed you will have obtained an acquisition which will be an inexhaustible source of pleasure and profit, and the benefit of which will be felt in all the

concerns of life. It will teach you to be just to others, as you require justice yourself; to pity and assist your fellow creatures; to make allowances for their failings, and to thank God that you are removed from those temptations and trials to which others, less fortunate than yourself, are so often exposed, and so often fall miserable victims.

These are some of the grounds on which I wish you to become acquainted with the laws of your country; and I will, as leisure permits, from time to time, send you a Chapter of Blackstone's Commentaries, abridged in the best manner I can, and with such corrections as are rendered necessary by the alterations in the law since the period when the learned Commentator wrote. I will add a few observations of my own as the various topics pass under our review.

I remain,

Your affectionate Father.

LETTER II.

OF THE NATURE OF LAWS IN GENERAL.

IF we consider the humblest plant that trails upon the ground, or the loftiest cedar upon the mountains; if we examine the minutest insect that creeps, or the most enormous monster that roams in the forest; we shall find that, from the first moment of their existence, through all their stages of growth, maturity and decay, they are not left to chance, but are guided by unerring rules laid down by the great Creator. If we turn from animate to inanimate matter, we shall find certain principles impressed on that matter, from which it can never depart, and without which it would cease to exist. Law, therefore, in its *general* sense, signifies a rule of action prescribed by a superior, and which the inferior is bound to obey. But however usage may have applied the term of *laws* to motion, gravitation, or to those instincts by which all animals are governed; yet, the Creator having formed the animate and inanimate creation by such laws as he chose to prescribe to himself for his guidance; those laws became the qualities or properties of the thing created, and became inherent and identified with their very nature and essence.

Law, therefore, in its true sense, and the one in which I shall consider it, denotes not the rule of action in *general*, but of *human* action only; and lays down those precepts by which man, as a free agent, is commanded to make use of his faculties for the general regulation of his conduct.

As man, however, depends absolutely on his Maker for every thing, he must conform in all points to his Maker's will. This will is called the *Law of Nature*, which, being ordained by God out of his infinite wisdom and goodness, is founded on those relations of justice which have existed prior to all positive commandments. Such as "*to live virtuously, to hurt nobody, and to give to every one his due.*"

The law of nature, therefore, being coeval with mankind, and dictated by God himself, is of course superior to every other obligation. In order, however, to apply this law to the exigencies of every individual, it is necessary to have recourse to *Reason* in order to discern her directions towards effectually securing our happiness. Our reason, however, being imperfect, and our understanding full of ignorance and error, Divine Providence interposed to discover and enforce its laws by direct *Revelation*.

Upon these two foundations, the law of nature or *Morality*, and the law of revelation or *Religion*, depend all Human laws. For although there are many regulations and rules of conduct, not provided for by the laws of nature and revelation, and which

vary in different countries according to circumstances; yet the laws of all nations must not be contrary to the great fundamental principles of the Divine and Natural law. Thus murder, theft, and perjury, crimes expressly forbidden by the laws of God, however we cannot *add* to their heinousness by any punishment, which human laws inflict, yet neither can we *diminish* their atrocity by any enactment we may choose to pass for their excuse or justification. But in matters which are in themselves indifferent, and have no moral turpitude, but are required by the welfare of the state, such as the importing articles from abroad, without payment of the duties prescribed, commonly called *smuggling*, there the law has power to make that unlawful, which before was not so.

I come now to the principal subject of this Letter, the law by which particular communities or nations are governed, and which is known by the name of *Municipal Law*. Municipal are, strictly speaking, the particular laws by which any *municipium* or free town is governed; but the word now is commonly applied to any one state or nation, which is governed by its own laws and customs.

MUNICIPAL LAW, is a rule of civil conduct prescribed by the supreme power in a state, commanding what is right, and prohibiting what is wrong.

First,— It is a rule;

Not applicable to a particular person, for then it would be a sentence and not a law; but it is permanent, uniform and universal. It is also called a *rule*, to distinguish it from advice or counsel, which we are at liberty to follow or not, as we think proper; whereas our obedience to a law, depends not upon our approbation, but upon the will of the legislature. It is also called a *rule* to distinguish it from a contract or agreement; the language of an agreement being *I will*, or *I will not*; that of a law is, *thou shalt* or *thou shalt not*.

Secondly,— It is a rule of *Civil conduct*;

The law of nature is a rule of Moral conduct; and the law of revelation is a rule of faith, and points out our duty to God and our neighbour, considered as *individuals*. But Municipal law, regards us as *citizens*, bound to observe certain duties which we are enjoined to perform, in return for the benefits of the common union.

Thirdly,— It is a rule of Civil conduct *prescribed*;

A bare resolution, without being notified, can never properly be a law. How this resolution should be notified, whether by Proclamations; by being publicly read in Churches; by writing or printing, as is the general course of our Acts of Parliament, is of no consequence. But when *it is notified* or *prescribed*, it is our business to be ac-

quainted with it; for if ignorance might be pleaded in excuse, the laws would be of no effect, but might always be evaded with impunity.

Fourthly,—It is a rule of civil conduct prescribed by the *Supreme power in a state*.

For legislature being the greatest act of superiority, it is the very essence of a law that it be made by the Supreme Power, wherever that power is lodged. How the several forms of government, which we see in the world, began, is a matter of great uncertainty, and of very little consequence. By what right soever they do subsist, there must be in all a supreme absolute authority, in which the rights of Sovereignty reside. By the Sovereign power is meant, the making of laws; whether it is lodged in the people at large, which is called a democracy; or in the hands of a few, selected for their wisdom, valour, or property, called an aristocracy; or in the hands of a single person, thence denominated a monarchy.

With us the legislature of the kingdom is entrusted to three distinct powers, acting as one, each entirely independent of the other, and each being armed with a negative voice,—the Sovereign, the nobles, and the people: and thus being compounded of the three usual species of government, it is so admirably tempered that it partakes of the advantages of each.

Fifthly,—It is a rule of civil conduct prescribed by the supreme power in a state, *commanding what is right, and prohibiting what is wrong*.

In order to do this effectually, it is necessary that the bounds of right and wrong should be established and defined by law. When this is done, it follows of course that it is the business of the law to enforce those rights and redress those wrongs. In order to do this, every law consists of several parts:—*Declaratory*, or laying down the rights to be observed, and the wrongs to be avoided: *Directory*, or ordering the subject to observe those rights, or to avoid those wrongs:—*Remedial*, or shewing how those rights are to be recovered, and those wrongs redressed; and *Vindicatory*, or declaring the penalty for transgression and neglect of duty.

First, Declaratory;

Those rights which the law of nature and revelation have established, such as life and liberty; and those crimes and misdemeanors which are forbidden by the laws of God, such as murder and theft, acquire no additional strength or turpitude from being allowed or forbidden by those human laws which are prescribed and published in subordination to the Great Lawgiver; but with regard to things in themselves indifferent, and which have become right or wrong, just or unjust, as the welfare of society demands, the case is widely

different. The law of God enjoins obedience to superiors; but who those superiors shall be, it is the province of human laws to determine. The law of God declares the taking of another's property to be a theft; but the law of man draws the distinction between such a seizure being a theft, or a justifiable taking by a landlord for rent.

Second, Directory

Virtually includes that part of the Municipal Law which is the *Declaratory*; for the law that says, "Thou shalt not steal," implies a declaration that stealing is a crime.

Third, Remedial

Is a necessary consequence of the former two. For in vain would rights be declared, or directed to be observed, if no remedy were offered to recover and assert them.

Fourth, Vindictory

Is that part of the law which lays down a punishment for a breach of it. It is the most efficient part of the law, and contains, in its penalty, its main force and strength.

As the disobedience of any law must involve in it either public mischief or private injury, so obedience to the laws is the first duty of every citizen; for penalties or punishments are never intended as an equivalent or compensation for the

commission of an offence, but only as that degree of pain or inconvenience supposed sufficient to deter men from breaking the positive enactment. Whether therefore the offence is morally wrong, or only made wrong by the municipal law passed for the good of the community at large, it is equally a breach of the law, and therefore becomes, as such, a moral offence, however readily the penalty be paid. For as the chief design of established government is the prevention of crimes, and the enforcement of the moral duties of man, obedience to that government necessarily becomes one of the highest of moral obligations ; and the principle of moral and positive laws being precisely the same, they become so blended that discrimination between them is difficult and impracticable.

Yours, &c.

LETTER III.

OF THE LAWS OF ENGLAND.

THE Municipal Law of England may be divided into two kinds:—THE COMMON LAW, and the STATUTE LAW.

The COMMON LAW is that part of our laws which was originally enacted by the Supreme Power in the state in the infancy of civil government, and had in those early days the same force as our Acts of Parliament. How these laws were then *notified* or *prescribed* is impossible now to determine, as from their great antiquity all trace of their origin is lost. Hence they are called *Unwritten* laws, to distinguish them from those laws which are of comparatively more modern date, and are certified and *written* as the deliberate acts of the Legislature. They are in fact, however, as much the *written* laws of the land as any of those of later enactment, being settled and determined by the decisions of our Courts of justice. Thus the reports of the cases determined by the Judges may be called the Statutes of the *Common law*, as our Acts of Parliament are the Statutes of the *Written law*.

The common law is distinguished into three kinds:—*General Customs*, *Particular Customs*, and *Particular Laws*.

First, General Customs,

Not set down in any written statute or ordinance, but depending on immemorial usage for their support, are adopted and recognised as the law of the land, and their validity established by the Judges in their several Courts of justice. Such as, that the eldest son alone is heir to his father; that any man may dispose of his personal property by will; that breaking the public peace is an offence, and punishable by fine and imprisonment. The decisions of Courts of justice being therefore the evidence of what is *common law*, are held in the highest regard, and are the histories of customs for the direction and guide of those who are selected to be the guardians and expositors of the laws.

Second, Particular Customs;

These affect the inhabitants of particular places only, and are therefore local. Such as the custom of *Gavelkind*, which ordains, in contradiction to the *general* custom, that not the eldest son, but all the sons shall succeed to the father. Such is the custom of *Borough English*, that the youngest son shall succeed to the father. These customs are contradictory to the general law of the land, but, being good by special usage, become part of that law.

In order to establish any particular custom, and

exempt it from the operation of general custom, *proof* of its existence, its *legality* when proved, and the method of its allowance, must be specially produced. In order to make a particular custom good, the following are the necessary requisites:—

First,—It must have been immemorial; *i. e.* its commencement must have been out of the memory of man.

Second,—It must have continued without interruption of the *right*.

Third,—It must have been peaceable and acquiesced in.

Fourth,—It must be a reasonable custom.

Fifth,—It must be certain, not liable to vary, or undefined as to the thing to be done.

Sixth,—It must be compulsory; not left to the option of any man, whether he will use it or not.

Seventh,—All customs must be consistent with each other, and not contradictory.

Third, Certain Particular Laws;

These are the *civil* and *canon* laws. These laws, as far as they are consistent with, and not repugnant to our laws, are adopted by our several Courts of justice in England; such as the Ecclesiastical Courts, the Military Courts, the Courts of Admiralty, and the Courts of our two Universities.

The *civil* laws are the civil or municipal laws of the Roman empire.

The *canon* law is the Roman ecclesiastical law.

I shall not dwell upon this branch of the common law of England ; but only remark, that it is part of the Unwritten or Common law, sanctioned by custom, and recognised by our superior Courts of justice.

STATUTE LAW.

The second branch of the municipal law is the Statute Law ; and consists of all those Acts of Parliament which have been passed from time to time by the Sovereign, by and with the consent of the House of Lords, and the House of Commons.

The manner of making these Acts of Parliament, I shall reserve for a future Letter, when I explain to you the constitution of Parliaments. At present, I shall notice only the different kinds of Statutes, which are two, *General* and *Special*.

They are *General* when they affect the whole community : such as statutes imposing taxes ; and therefore they are *public*.

They are *Special* when they affect only individuals, as an Act of Parliament to change a name, and are therefore *private*.

Our Municipal laws, thus composed of the Common Law and the Statute Law, have effect and jurisdiction over the kingdom of England including the principality of Wales. For though, by the common law, neither Wales, Scotland, nor Ireland were subject to their jurisdiction ; yet

Wales having been annexed to England, and incorporated with it by the 27th of Henry VIII., has become subject to the same laws, with only some immaterial peculiarities. Scotland was united to the Crown of England in 1707, and is governed by its own municipal laws as before, unless specially altered by Act of Parliament. The same may be observed of Ireland, the Isle of Man, Jersey, Guernsey, Alderney, and our adjacent as well as distant Colonies. Our Statute law is no ways binding upon them, but as they are specially mentioned, but leaves them to their own municipal laws, sanctioned and confirmed to them as appendages of the British Empire.

The kingdom of England, which is the immediate subject of the Municipal laws, comprehends Wales and all parts of the sea; the high seas being part of the realm of England, whereon our Courts of Admiralty have jurisdiction, though not subject to the common law.

The territory of England is divided into two divisions; *Ecclesiastical* and *Civil*.

The *Ecclesiastical* division consists of two provinces; Canterbury and York. The former includes twenty-two dioceses or bishoprics; York five: each diocese is divided into archdeaconries, and each archdeaconry into parishes. A parish is that circuit of ground, which is confided to the care of a parson. There are about 10,700 parishes, including parochial chapelries.

The *Civil* division consists of counties, and each county is divided into hundreds; each hundred into tithings or towns. The word *town* has become a general term, comprehending *cities*, *boroughs*, or *common towns*. A city is a town incorporated, and either is, or has been, the see of a bishop. A borough is a town, either corporate or not, that sends burgesses to Parliament. Other towns which are neither cities, nor boroughs, but which have the privilege of markets, though some have not, are still towns in Law. These towns originally had but one tithing or parish, but from increase of inhabitants are now divided into several parishes. The hundred has a high constable presiding over it; a parish, a headborough or constable; and a county, a sheriff. There are counties called corporate, which are certain cities being counties of themselves, and are governed by their own magistrates, as London, York, &c.

I am aware that the foregoing explanations will not afford you much amusement; and that you will be in danger of losing the little relish you may have for so dry a subject as that of the law. But before you entered the Temple of Justice, it was absolutely necessary that you should have a general view of that glorious edifice, which is the admiration and envy of the world. I have now brought you to the threshold; and we will examine together those various parts of the interior, which are at once the supports and ornaments of the

whole. You must recollect that in every science and pursuit, it is necessary to understand many preliminaries, which in themselves may be of little interest, but without which you would in vain endeavour to obtain success. Had you any pleasure in the French or Latin Grammar, and did they afford you the entertainment which you have since received from Molière and Virgil? certainly not: but they were the instruments to open those scenes of mental amusement, which would otherwise have been closed from your view. Were we to be deterred from any of our pursuits, because they could only be obtained by labour and study, then indeed we should not only be foolish, but wicked; as we should be tacitly arraigning Providence, for not creating us equal to his own perfection. Be not deterred, therefore, because the key of knowledge is not knowledge itself; but strenuously endeavour so to improve yourself, that you may be able to use this key to the greatest advantage; and to unlock all those treasures of wisdom and knowledge, to which you are offered the readiest and most uncontrolled access.

Yours, &c.

LETTER IV.

OF THE ABSOLUTE RIGHTS OF INDIVIDUALS.

THE Municipal Law of England, being a rule of civil conduct, commanding what is *right* and prohibiting what is *wrong*, it follows of course that the primary and principal objects of the law are *Rights* and *Wrongs*. I shall therefore, in the following Letters, divide the subject into four parts:—

1. THE RIGHTS OF PERSONS,

AND

2. THE RIGHTS OF THINGS:

3. PRIVATE WRONGS, OR CIVIL INJURIES,

AND

4. PUBLIC WRONGS, OR CRIMES.

The Rights of Persons are of two sorts: *Natural*, or such as the God of Nature hath given us; and *Artificial*, or such as are created by human laws for the purposes of society and government.

The Natural Rights of Persons are also of two sorts: *Absolute*, or such as belong to particular men as individuals; and *Relative*, or such as are incident to them as members of society, and standing in various relations to each other.

The ABSOLUTE Rights of Man, considered as a free agent, are denominated the natural liberty of mankind. This liberty consists in acting without any restraint or control but such as is imposed upon him by the law of Nature. But when men entered into society, and became united either in one family or in one government, this uncontrolled liberty in all became subversive of all order, harmony, and concord; and as every one had the power of doing what he pleased, there was no security in any of the enjoyments of life. Hence it was found necessary for each to resign a portion of his natural liberty, in order to secure the remainder from violence and oppression; and thus, by submitting to the control of such laws and regulations as the good of the community required, to receive in return protection and security.

Political Liberty therefore is nothing more than Natural Liberty, so far restrained by human laws as is necessary for the advantage of the public; and leaves the subject entire master of his own conduct, except in those points wherein the public good requires direction and control. This liberty, therefore, being founded in nature and reason, is coeval with all forms of government. For though in some states we find it overwhelmed and depressed by overbearing tyrants, in others so luxuriant as to tend to anarchy and rebellion, yet in our free government, however for a time oppressed by tyrannical princes, or exceeding its proper

boundaries by the arts of designing demagogues, yet it has always been delivered from its temporary embarrassment, and restored to its proper level, as soon as the dangers which surrounded it have disappeared.

Whenever, therefore, our civil liberty has been in danger or actually encroached upon, we find that the principles which first established it have been asserted in Parliament, and at last recognised by those who were attempting to overturn it. The first recognition of it was the *Great Charter*, obtained from King John in the year 1215. This Charter contained very few new grants, but was declaratory of the fundamental laws of England, and was declared part of the law of the land in the time of Edward the First, and also by many corroborating statutes passed from time to time as occasion required. The *Petition of Right*, which was a parliamentary declaration of the liberties of the people, received the assent of Charles I. in 1628. Then came the *Habeas Corpus Act* of Charles II.; the *Bill of Rights*, delivered by the Lords and Commons to the Prince and Princess of Orange in 1688; and lastly the *Act of Settlement*, whereby the Crown of the kingdom was limited to the House of Hanover. These rights, thus defined by these several statutes, were either the remains of natural liberty, which were not required to be surrendered for public convenience, or were those civil privileges which society had

engaged to provide in lieu of the natural liberties already surrendered.

These rights may be divided into three principal articles :—

1. THE RIGHT OF PERSONAL SECURITY,
2. THE RIGHT OF PERSONAL LIBERTY,
AND
3. THE RIGHT OF PRIVATE PROPERTY.

First,—THE RIGHT OF PERSONAL SECURITY consists in the legal enjoyment of *life, limbs, body, health, and reputation*.

Life, being the immediate gift of God, is a right inherent in every individual.

Limbs and *body* are also the gift of the allwise Creator, to enable man to defend himself from external injuries. Whatever he does, therefore, to save himself from external injuries is looked upon as done in his own defence, and if death ensues, it is murder in the aggressor, and justifiable homicide in himself. So far, indeed, is this natural right of self defence recognised by the law, that if under the fear of the loss of life, or limbs, or of bodily harm, a man is induced to execute a deed or do any other legal act, such acquiescence so extorted is not considered obligatory.

Health is a right to be protected from whatever may prejudice or wrong it; and lastly,

Reputation, or the good name of every man, is

a right to be secured from the arts of detraction and slander, since without these it is impossible to have the full enjoyment of any other rights.

Secondly,—THE RIGHT OF PERSONAL LIBERTY. This consists in the power of changing our abode, or moving one's person to whatsoever place our inclination may direct, without imprisonment or restraint, unless by due course of law. These rights are strictly natural, nor have the laws abridged them without sufficient cause. No man can be imprisoned at the mere direction of a magistrate, without the express permission of the laws; for besides the Great Charter and the other Acts before mentioned, passed for the preservation of this natural right, the *Habeas Corpus Act* (so called from the two first words of the writ issued by the Courts of Queen's Bench or Common Pleas, directing the Sheriff to *have the body* of the prisoner before them on a certain day) was expressly passed to secure the liberty of the subject, and to prevent his being detained in custody without an opportunity being given him of arraigning the justice of his detention. If therefore at any time a man is deprived of his personal liberty in an illegal and arbitrary manner, he may apply for this writ with a view to his being brought before the Judges, who are bound to determine whether the cause of his imprisonment be legal, "*and thereupon do as justice shall appertain.*"

In Constantinople, a subject is liable, at the caprice of the Grand Signior, to be imprisoned for life or for years, to have his head cut off at a moment's warning, or be sewn up in a bag and thrown into the sea. In Russia, an offender against the laws, or against the will of the Emperor, after undergoing the knout, is sent into Siberia, to be imprisoned, sometimes for life, between impassable mountains covered with eternal snow. In France, previous to the Revolution, *lettres de cachet* were issued at the pleasure of the King to immure within the walls of the Bastile the victims of public justice or private vengeance; and in most countries where the liberty of the subject is unprotected by the law, the will of the Supreme Power in the State is the only measure of its existence. But in England, our liberties have always been the birthright of Englishmen; and though occasionally encroached upon by ambitious Princes, yet the words of the Great Charter, which declared that no man shall be imprisoned but "by the judgment of his peers and the law of the land," have always regained their ascendancy after the temporary convulsions which threatened them have passed away, and have become the rock of safety on which our liberties have been founded and preserved.

Third,—THE RIGHT OF PROPERTY. This consists in the free use, enjoyment, and disposition of our acquisitions without any control or diminu-

tion, except only by *the law of the land*. This right of property is founded in nature; and though the methods of preserving or disposing of what is our own are entirely derived from society, yet this is one of the many instances where we are called upon to surrender part of our natural rights that we may more perfectly enjoy the remainder. The law, therefore, has prescribed certain forms to be observed in the *manner* of alienating property, but has not touched the inherent *right* of doing so. As the right of possession, with all its accompaniments, is thus preserved to the subject, so neither can he be dispossessed of this right without due course of law or his own consent. In the former case, if the good of the public demands the alienation of any ground or building belonging to him for the purpose of public benefit, as for canals or roads, then the law forces him to acquiesce, at the same time allowing him a fair and just equivalent; not stripping him in an arbitrary manner, but giving him a full indemnification. In the latter case, he pays no taxes and demands levied on him for the maintenance and expenses of the State, but to which he has assented through the voice of his representatives in the House of Commons; all taxes, loans, gifts, benevolences, or by whatever name they may be called, being illegal if without the consent of Parliament.

In order that these rights of personal security, liberty, and property may be secured inviolate, the

Constitution has provided other auxiliary rights to protect and maintain them in their full and perfect enjoyment, *viz.*

The powers and privileges of Parliament.

The limitation of the Royal Prerogative.

The different Courts of Justice for redress of injuries.

The right of petitioning the Sovereign and either House of Parliament for redress of grievances; and

The right of wearing arms for defence.

In these several articles consist the *Rights*, or, as they are emphatically called, the *Liberties* of Englishmen. They are our birthright to enjoy entire, unless where the laws of our country have laid them under necessary restraints,—restraints in themselves so moderate and so gentle, that they have increased and strengthened rather than fettered or diminished our liberty; and by protecting it from the licentiousness of those who consider all laws as inimical to freedom, have rendered it equally favorable to the stability of the Throne and to the happiness of the People.

Yours, &c.

LETTER V.

RIGHTS OF PERSONS.

OF THE PARLIAMENT.

The relative rights of persons, are those which are incident to them, as members of society, and standing in various relations to each other.

The most public Relation, by which men are connected together, is that of government; as the relation between magistrates and people. In all despotic governments, the right of making and enforcing laws, is vested in one and the same person. Wherever this is the case, there can be no public liberty; because whatever such person wills to do, he has the power of executing. In England, the Supreme Power is divided into two branches; the *Legislative*, or the Parliament, consisting of Queen, Lords, and Commons; and the *Executive*, consisting of the Sovereign alone.

The PARLIAMENT, or General Council of the Nation, is coeval with the kingdom itself. In early times indeed its powers and importance had not arrived to the degree which it has now attained. But as early as in the time of the Heptarchy, we

find this General Council held under the name of the Wittenagemote, or assembly of wise men. Such a meeting was recognised by Alfred, and by our succeeding Saxon, Danish, and Norman monarchs. How these general councils were then composed, it is impossible at present to determine; but it is agreed, that the Constitution of Parliament, as it now stands, was marked in the great Charter of King John, A. D. 1215; and it has subsisted in fact from the 49th of Henry III., A. D. 1266; there being extant writs of that date, to summon knights, citizens and burgesses.

First,—The time and manner of its assembling.

It is a branch of the Royal Prerogative, that no Parliament can be convened by its own authority, or by the authority of any, except the Sovereign alone. It is therefore summoned by the Queen's writ issued out of Chancery, at least forty days before it begins to sit. By several Acts of Parliament it is declared to be one of the rights of the people, that Parliaments ought to be held *frequently*: and this indefinite term is reduced to a certainty, by the 6th of William and Mary, which enacts, that a new Parliament shall be called within three years after the dissolution of the old one. But as many particular and necessary Acts are now passed for one year only, and which must be renewed annually, this necessity has virtually repealed these Acts, and Parliament must be summoned every year.

Second,—The constituent parts of Parliament.

These are the Sovereign and three Estates of the Realm; the Lords Spiritual, the Lords Temporal (who with the Sovereign sit in one House), and the Commons, who sit by themselves. The Sovereign is thus made a branch of the legislative power, in order to preserve the balance of the Constitution. For if the legislative power were entirely in the hands of the two Houses of Parliament, they would continually be encroaching upon the right of the Executive. To hinder this the Sovereign is herself a part of Parliament: and that share, which the Constitution has wisely placed in her hands, consists in the power of *rejecting*, rather than in *resolving*. The Sovereign therefore cannot begin any alteration in the established law, but may approve, or disapprove of the alteration suggested. Neither can the two Houses of Parliament alter the existing laws, or enact new ones, without the consent of the Supreme Power. Each is thus a check upon the other, it being necessary that all laws should receive the consent of each of the branches of Parliament.

The *Spiritual* Lords are the two Archbishops, twenty-five English, and three Irish Representative Bishops. They hold, or are supposed to hold, ancient Baronies under the Sovereign, which being unalienable from their dignities, give them their seats as Peers of Parliament. The Bishops of Lon-

don, Durham and Winchester take precedence in right of their respective Sees. The Bishop of Sodor and Man, as Bishop thereof, has no seat in the House of Peers. The Statute 10 & 11 Victoria, ch. 108, enacts, that upon a vacancy occurring in any English or Welsh Bishopric, the newly consecrated Bishop shall not, unless elected to one of the Archiepiscopal Sees, or to one of the Sees of London, Durham or Winchester, be entitled to sit in the House of Lords, but such other Bishop shall take his seat there, as has not been already summoned.

The *Temporal* Lords consist of all the Peers of the realm, by whatsoever title distinguished: as Dukes, Marquises, Earls, and Barons. Some of these sit by descent, as all ancient Peers; some by creation, as all new made Peers; and some by election, as the sixteen Peers for Scotland, and the twenty-eight Peers for Ireland. The number of Peers is indefinite, and may be increased at the will of the Crown.

The *House of Commons* consists of such a number of persons, as have been chosen by the several districts or places, which return Members to Parliament, to represent them in the House of Commons. For, however, in a small state, the people, in their collective capacity, might be admitted into their share of the legislature without inconvenience; yet, in a large and extensive territory, such popular deliberations would become tumultuous. With

us, therefore, the people do that by their representatives, which they cannot perform in person. The proprietors of land elect members for counties; and the mercantile or trading part elect for cities and boroughs. The number of English and Welsh representatives is 496; of Irish 105; of Scotch 53; total 654,—Sudbury, which sends two members, being now disfranchised.

Third,—The Laws and Customs of Parliament.

The Supreme sovereign power in the State being lodged in the King or Queen regnant, Lords and Commons, it follows of course, that as no Act can pass into a law without the consent of all three, so every Act that receives that assent, is absolute and despotic; and that whatever Parliament shall think proper to enact, is binding and uncontrollable. In order, therefore, to prevent those mischiefs that might arise from placing this extensive authority in hands either incapable or improper, certain rules and orders have been adopted by both Houses for their internal regulation. I will briefly enumerate the most important parts of the Constitution of Parliament, without leading you into an intricate and unnecessary detail; intending only to give you a general outline, to be filled up whenever your leisure or curiosity shall induce you to make further researches.—No man can sit in Parliament unless he be twenty-one years of age.—No Member can sit in either House till he

has taken the Oath of Allegiance, Supremacy, and Abjuration, with the exception of Roman Catholics, who are allowed, by stat. 10 George 4, ch. 7, to substitute another oath in its place. Aliens also, though naturalized, are incapable of sitting in Parliament; and whatever matter arises concerning either House of Parliament, is to be examined and adjudged in that House to which it relates, according to the laws and usages of Parliament. With respect to the Privileges of Parliament, they are the privileges of speech, and of person from arrest on civil suits, but not in criminal. These in a peer are for life; in a commoner for forty days after the prorogation, and forty more before the first meeting; which, in fact, is as long as Parliament subsists, it seldom being prorogued for more than eighty days at furthest.

Fourth,—The Laws and Customs relating to the House of Lords in particular.

They are attended in Parliament by the Judges, Serjeants at law, who are Queen's Counsel, and Masters in Chancery. One Lord may be proxy for another; but not in committees, or in questions of guilty or not guilty. Each Peer has a right to enter a protest, with his reasons, when a vote passes which he disapproves. All bills which affect the right of peerage must commence in the House of Lords, and suffer no changes in the House of Commons.

Fifth,—The Laws and Customs relating to the House of Commons.

These relate principally to the raising of taxes, and the election of their own members. All money bills must originate in the House of Commons, though the Lords have the power of rejecting, but not of altering or amending. The true reason of this is, that the Lords, being a hereditary and permanent body, are supposed to be more influenced by the Crown than the temporary and elective body nominated by the people. In the election of Members of the House of Commons consists the democratical part of our Constitution; for in a democracy there can be no exercise of sovereignty but by suffrage. The exercise of this sovereignty consists in the choice of representatives, and this power is regulated by several salutary provisions, which may be reduced to three heads:—

1. The Qualification of the Electors,
2. The Qualification of the Elected,
3. The Proceedings at Elections.

1. The Qualification of the Electors.

This, for the election of Members for a county, depends upon property, in order to exclude persons who, having no property of their own, are supposed liable to the influence of those who have. Thus an elector for a county must have a freehold,

unincumbered, to the annual value of 40*s.*; or he must, according to the provisions of the Reform Act, 2 William 4, ch. 45, sect. 9, occupy land, or lands and tenements, to the annual value of 50*l.*, under one landlord; or he must hold copyhold lands or tenements for his own life, or for that of another, to the yearly value of 10*l.*; or hold a lease of lands or tenements for the term of sixty years, if the annual value be only 10*l.*; but if the annual value be 50*l.*, then an original term of twenty years is sufficient.

Even if a person has all or any of the above requisitions as to property, yet, under certain circumstances, he is disqualified from voting; as follows:—

1. If he has not arrived at the age of twenty-one years.
2. If he has been convicted of perjury in a Court of law.
3. If, within the year, he has been in the receipt of parochial relief.
4. If he is concerned or employed in the charging, collecting, levying, or managing the duties of Customs or Excise, or in collecting the house duty.
5. If he is employed under the Commissioners of Stamps, or is such Commissioner.
6. If he is employed or in any way connected with the General Post Office, or as a police constable.

7. If he is a Peer of the realm.
8. If he is trustee of the property on behalf of which he claims to vote.

The qualification for the election of members for a city or borough is twofold :—

1. By privilege arising from certain ancient rights.
2. By a property qualification created by the Reform Act.

1. Of these ancient rights, *the first* is the Freedom of the Borough, which may be obtained, according to the prevalent custom, by birth or servitude to apprenticeship: *the second* is payment of rates and taxes by inhabitant housekeepers, otherwise called Scot and Lot: *the third* is what is called *Pot-walling*, or *Potwalloping*. A Potwaller is one who, whether he be a householder or lodger, has the sole dominion over a room with a fireplace in it, where he either cooks his own diet or has a legal right to do so at some other place within the house where he resides.

These ancient rights are still reserved by the Reform Act.

2. *The second qualification* for the electors of Members for cities or boroughs is that of Property.

For by the 27th section of the Reform Act, 2 William 4, ch. 45, it is provided, that every male person of full age and not subject to legal incapacity, who shall occupy as owner or tenant, within any city or borough, any house, warehouse,

counting-house, shop, or other building, separately or jointly with any land within the said city or borough, and held under the same landlord, of the clear yearly value of ten pounds, shall, if duly registered, be entitled to vote. An occupation of twelve months, and a residence for six months previous to the election within seven miles of the city or borough, are also required.

Upon the construction of this act, *viz.* as to what is a house or building according to its genuine intention,—what is to be considered residence,—and in what capacity the occupation takes place, *e. g.* whether as servant or owner, arise many intricate questions which it is needless for me to refer to, but which are constantly receiving their solution in the Courts of the Revising Barristers, held annually for the determination of all claims advanced for the privilege of voting whether in counties, cities, or boroughs.

2. *The Qualification of the Elected.*

Some of these qualifications depend upon the customs of Parliament, and some upon certain statutes. A candidate for admission to the House of Commons must not be an alien born nor a minor, not one of the fifteen Judges nor one of the Judges appointed under the County Court Act, nor a police magistrate, nor a revising barrister, nor assistant barrister in Ireland, nor one of the clergy, Protestant or Roman Catholic. No

outlaw, in criminal cases, can sit in Parliament, nor one convicted of treason or felony. It is generally held to be the better opinion, that outlawry, in civil suits, causes no disqualification. A candidate reported guilty of bribery or treating by a committee of the House, is disabled from sitting in the then existing Parliament.

No sheriff, mayor, or bailiff of a borough can be returned for the county, city, or town over which he presides, he being the returning officer; but he may be elected for any other place. No person concerned in the management of taxes created since 1692, with certain exceptions; nor any one who holds an office of profit under the Crown, created since 1705. Also, if any Member accepts any office of profit under the Crown, which existed prior to 1705, his seat becomes vacant, though he is again eligible, whereby an option is given to his constituents to retain him as their representative or not. No person having a pension for terms of years nor during pleasure, is admissible,—his independence being supposed to be liable to be influenced by his interests; but the fact of a man's wife receiving a pension does not disqualify him. Formerly, the property qualification of members of the House of Commons was required to consist entirely of an estate in land, either freehold, copyhold, or for life; but the 9th of Anne, c. 5, which made that enactment, was repealed by the 2 & 3 Victoria, ch. 48, sect. 1; and the 2nd section of the

latter statute enacts, that a clear yearly income of 600*l.*, out of whatever funds it may be derived, shall entitle the possessor to represent a county, while an income of 300*l.* per annum renders him eligible for a city or borough. An exception was made in the former statute in favour of the eldest sons of Peers, and of persons qualified to serve as knights of a shire, and also members for the two English Universities and for Trinity College, Dublin. The same exceptions are continued by the 1 & 2 Victoria, ch. 48, sect. 9.

3. *The Proceedings at Elections.*

As soon as Parliament is summoned, the Chancellor sends his warrant to the clerk of the Crown, and the latter issues the writ to the Sheriff, who sends his precept to the returning officers of the cities or boroughs within his county, and himself attends the election of the Members for the county. If a vacancy occurs during the sitting of Parliament, the Speaker, instead of the Lord Chancellor, issues his warrant, by order of the House, to the Clerk of the Crown; but if it occur during the recess, no such order of the House is necessary. In order that all elections may be free and uninfluenced, all soldiers must withdraw from the place where the election is held. All undue influence by rioting, bribery, treating or giving money to particular persons, or to the particular place, makes such election void. When the election is closed, the Sheriff

returns the writ to the Crown Office; and the Members returned by him are the representatives elected, until the House of Commons should decide the contrary.

Sixth,—The method of making Laws:—

Each House of Parliament has a Speaker at its head. The one in the House of Lords, is the Lord Chancellor, who, as a Lord of Parliament, can give his opinion and vote. The other in the House of Commons, is chosen by the House out of its own body, and approved of by the Sovereign, but cannot give an opinion nor vote, unless the votes are equal. In each, the majority binds the whole. The first stage of an Act of Parliament is a Bill brought in, in either House by one of its Members; after being read a second time it goes into committee, and must be read three times in either House before it can pass through the House into which it is introduced. It is then passed to the other House, where it undergoes the same forms: and finally receives the assent of the Sovereign, either in person, or by commissioners.

Seventh,—The manner in which Parliament may be adjourned, prorogued or dissolved:—

An *adjournment* is a continuance of the sitting from day to day, or from week to week, and is the Act of the House itself.

A *prorogation* is an end of the sitting or session,

and is ordered by the Royal authority alone, either in person, by commissioners, or by proclamation.

A *dissolution* is an end of the Parliament itself, and is effected in the same way as a prorogation.

It may also be effected by the death of the Sovereign: but then by an Act passed for that purpose, it may sit for six months after such demise of the Crown, unless sooner dissolved. It may also be effected by its having reached the end of the term, for which by law it can only sit, *viz.* seven years; but it is seldom allowed to reach this term, and is generally dissolved at the end of six years.

Yours, &c.

LETTER VI.

RIGHTS OF PERSONS.

OF THE TITLE OF THE SOVEREIGN; OF THE ROYAL FAMILY; OF THE COUNCIL BELONGING TO THE SOVEREIGN, AND OF THE DUTIES INCIDENT TO THE SUPREME POWER.

OF THE TITLE OF THE SOVEREIGN.

THE grand fundamental maxim, upon which the right of succession to the Throne of these kingdoms depends, is this: that the Crown is *hereditary*, and this in a manner *peculiar to itself*; but that the right of inheritance may from time to time be *changed* or *limited by Act of Parliament*; under which limitations the Crown still *continues hereditary*.

First.—It is *hereditary* or descendible to the next heir. All regal governments must be *hereditary* or *elective*, and had our ancestors chosen to have made our monarchy *elective*, there is no doubt but they could have done so. But they chose to es-

tablish originally a succession by inheritance. And they wisely did so ; for if the individuals, who compose the State, could always continue true to first principles, uninfluenced by passion and prejudice, unassailed by corruption, and unawed by violence, then indeed an elective government would be as much to be desired in a kingdom, as in inferior communities. But as elections are too frequently brought about by undue influence, partiality and violence, the chance of choosing the most proper person to fill the Throne, would, at least be doubtful. Added to this, in disputes respecting the election of the chief magistrate, there would be no superior power to refer to, to settle them, and allay the dissensions between one part of the nation and the other, except an appeal to civil and intestine war. In order to prevent the periodical bloodshed, which would take place at every fresh election, an hereditary monarchy has been established in this, and most of the kingdoms on the Continent.

Second,—It is hereditary in a manner *peculiar to itself*: it is descendible to the next heir in the same manner as that in which the common law has pointed out for the succession of landed estates, yet with one or two material exceptions. Instead of descending to all the females, in default of the males, it descends to the eldest female only, as was the case of Queen Mary, who succeeded to

the Throne by herself, and not in partnership with her sister Elizabeth. It also can descend to the nearest relation of the half blood, as in the instance of Queen Elizabeth; which land cannot.

Third,—The right of inheritance may be *changed or altered* by Act of Parliament. It is unquestionably in the power of the Supreme legislative authority of the kingdom, the Sovereign, Lords, and Commons, to defeat this hereditary right, as, if this power was not lodged somewhere, the heir-apparent might be a lunatic, idiot, or otherwise incapable of reigning.

Fourth,—However changed or limited, it still *continues hereditary*. Hence in our law, the Sovereign, as the Supreme Power in the State, is said never to die; but the moment the *man* is dead, the *Crown* instantly vests in his heir. So that there can be no interval whatever between the demise of the Crown and the assumption of it by the person, who is either his heir by common law, or to whom it has been limited or transferred by the Act of the Legislature. The instances in which the Parliament has exercised this right are two. It occurred at the Revolution of 1668, when the Throne having been declared vacant on the flight and abdication of King James II., the two Houses of Parliament, which represented all the estates of the people, settled the Crown, first on King

William, and Mary his wife, and the survivor of them: and upon their children; and then upon Princess Anne and her children. When, however, towards the end of the reign of the latter Princess, all hopes of a lineal succession were at end, the Parliament again exerted their authority, by limiting and settling the Crown upon the electoral House of Hanover.

OF THE ROYAL FAMILY.

The first and most considerable branch of the Royal Family, during a King's reign, is the Queen. She is either Queen *Regent*, Queen *Consort*, or Queen *Dowager*.

The Queen *Regent* is she who holds the Crown in her own right, and has the same prerogatives and rights as the King.

The Queen *Consort* has peculiar privileges, more extensive, and different from married women. For though still a subject, and in her capacity as wife, obedient to her husband, yet, in her public character, she is exempt and distinct from the King. She has power to purchase lands, to convey them, and make leases; she can take a legal grant from her husband, which no other woman can; she can make a will: has separate officers, not only in matters of ceremony, but in law; and in all legal proceedings she is considered as a single woman. Her person is as sacred as the King's; but if she is

charged with treason, she is to be tried by the Peers of Parliament.

The Queen *Dowager* is the widow of the King, and enjoys most of the privileges of a Queen Consort, except that her person is not under the same protection.

First in rank next to the Sovereign at this time, but her Subject, is His Royal Highness Prince Albert, Duke of Saxony and Prince of Coburg and Gotha, Consort and Cousin of her Majesty, who was naturalized by Act of Parliament, passed on the 7th February, 1840, three days before the Royal Marriage; and who, by an order published in the *Official Gazette*, on the 20th March following, takes precedence over every individual in the realm, immediately after the Queen.

The *Prince of Wales*, or heir-apparent to the Crown, has also particular privileges. His person and that of his wife are equally protected with that of the Sovereign. He is created Prince of Wales and Earl of Chester; and if the eldest born, is by inheritance Duke of Cornwall. But on the death of a Prince of Wales, though his next brother becomes Prince of Wales and Earl of Chester, yet he is not Duke of Cornwall by inheritance, as he was not the eldest son born.

The Prince of Wales is also Duke of Rothsay and Seneschal of Scotland.

The eldest daughter of the reigning Sovereign is styled the *Princess Royal*, and her person is under the peculiar protection of the law; and this,

because on failure of issue male, she inherits the Crown as sole heir, on which account she is more respected by the law than any of her younger sisters.

The term *Royal Family*, in a general sense, means the Protestant descendants of the Princess Sophia of Hanover, to whose issue the Crown was limited by 12 & 13 of William and Mary. In a more confined sense, it signifies those who are immediately related to the reigning Prince. They take precedence above all Dukes, and all officers of state, according to their degree of kindred to the Sovereign, and they cannot intermarry with a subject.

OF THE COUNCILS OF THE SOVEREIGN.

These are: 1. The High Court of Parliament. The Peers of the realm are by birth hereditary Councillors of the Sovereign. It is also the right of each Peer, to demand an audience of the Queen, and lay before her such matters as he shall judge important to the public good. 2. The Judges for law matters. 3. The Privy Council. This last is constituted of such men as the Sovereign selects. The Cabinet Ministers are always of this body. The *duty* of the Privy Council, when summoned, is to advise their Sovereign to the best of their power, for her honour and the public good: to keep her counsel secret: to help and strengthen the execution of what shall be resolved, and to withstand those who would attempt the contrary.

The *power* of the Privy Council is to inquire into all offences against the Government, and to commit

the offenders to safe custody to take their trial. It is also a court of justice in particular cases, as *e. g.* in colonial causes, and in appeals from the Ecclesiastical Courts, to hear appeals before the Sovereign in council, when there must at least be three counsellors present. The *privileges* of the Privy Council consist principally in the security which the law has given them for the protection of their persons. The *dissolution* of the council depends upon the Queen's pleasure, as she may discharge any particular member, or the whole of them, whenever she thinks proper.

OF THE SOVEREIGN'S DUTIES.

The principal duty of the Sovereign is to govern her people according to law, being bound by her oath at her Coronation "to govern according to law, to execute judgment in mercy, and to maintain the established religion." This oath is a clear and solemn recognition of those duties which were no less binding upon her on her accession to the throne by the fundamental principles of the monarchy.

Yours, &c.

LETTER VII.

RIGHTS OF PERSONS.

OF THE ROYAL PREROGATIVE.

ONE of the principal bulwarks of the British Constitution is the limitation of the Royal prerogative, by bounds so certain and notorious, that it is impossible the Sovereign can ever exceed them without the consent of the people, or without a violation of that compact, which originally, as well as by her coronation oath, she has so solemnly undertaken to observe. This limitation of the royal authority was a first and essential principle of all the Gothic systems of government established in Europe; and, however, from violence, or any other cause, it has been overborne in many of the kingdoms of the Continent: and although with us, it has sometimes been encroached upon by wicked or ambitious Rulers; yet the restrictions of the Royal Prerogative, were always a part of that Constitution, so peculiarly adapted to uphold the

power of the Sovereign, and the liberties of the people.

The word Prerogative signifies that special pre-eminence, which the Queen *alone* has above all other persons, in right of her regal dignity. For if a Prerogative could be held in common with a subject, it would cease to be a particular exception any longer. It is therefore that law in the case of the Queen, which is law in no case of the subject.

The Prerogatives of Her Majesty may be divided into three:—1. Her *Royal Dignity*; 2. Her *Royal Authority*; 3. and Her *Royal Income*.

1. OF THE ROYAL DIGNITY.

Under every monarchical Government, the Sovereign ought to be distinguished from his subjects not only by outward pomp and decorations of Majesty, but by ascribing to him certain qualities, as inherent in his regal capacity; he ought to be looked upon as a superior being, and to receive that awful respect which may enable him with greater ease to carry on the affairs of Government.

First,—The law ascribes to Her present Majesty the attribute of *Sovereignty*, or pre-eminence, as the Supreme head of the realm in matters both civil and ecclesiastical, inferior to no man upon earth, dependent on, and accountable to no man. Hence it follows, that no action can be brought against the Sovereign in civil matters, because no

court can have jurisdiction over her. Hence also her person is sacred, because no jurisdiction has power to try her in a criminal way. Should, however, her subjects be aggrieved either by private injuries or public oppressions, the law has provided a remedy in both cases. In the former they may petition the Queen in her Court of Chancery, where her Chancellor will administer right, as a matter of grace. In the latter, as the Queen cannot misuse her power without the advice of evil counsellors, and the assistance of wicked ministers, the Constitution has provided, by means of indictments and impeachments, a punishment for those of her servants, who shall dare to assist the Crown in contradiction to the laws of the land. Hence the Sovereign is said to *do no wrong* herself, because it would be absurd to call that wrong, where there is no possible redress; and, therefore, as she cannot be punished for any wrong, her ministers and advisers are made responsible for her.

Secondly,—The law attributes to her in her political capacity, absolute *perfection*. For she is supposed not only incapable of *doing* wrong, but of *thinking* wrong. By which is to be understood, that however the Crown might do any thing prejudicial to the commonwealth, or to a private person, yet the law supposes that she never meant to do any improper thing, but was deceived, and upon that ground the Act is declared void. In

addition to this, the law has determined that in the Sovereign there can be no negligence, and, therefore, no delay will bar her right. She cannot be a minor or under age, and, therefore, all her assents to Acts of Parliament are good, though she has not attained legal full age. Wherever the heir-apparent has been very young, a Guardian, Protector, or Regent has been appointed for a limited time; which provision demonstrates the truth of the maxim, that in the Sovereign there can be no legal minority, and therefore that she has no legal Guardian.

Thirdly,—A third attribute of the Royal Majesty is its *perpetuity*. The royal dignity of the Sovereign is instantly, on the death of the reigning Monarch, vested in the successor. This is emphatically called the *demise* of the Crown, which signifies a transfer of property from one to another

2. OF THE ROYAL AUTHORITY.

In addition to these peculiar attributes of Majesty the Sovereign is also invested with many Prerogatives, in which exists the Executive part of the Government. These respect the nation's intercourse with foreign countries, and its own domestic government and civil polity.

Respecting our Intercourse with Foreign Countries.

First.—The Sovereign, as representative of her people, has the sole power of sending Ambassadors

to foreign states, and receiving Ambassadors at home. These Ambassadors being representatives of the Supreme Power of the State from which they are sent, have various privileges attached to their office as long as they hold it. One of these is protection for themselves and servants from arrest in civil cases; and though in criminal cases, instances may be met with in our history where their office afforded them no protection from the penalty of the law, as in the case of the Portuguese Ambassador, in the time of Oliver Cromwell, who was hanged for murder; yet it seems to be consonant to the true spirit of the laws of nations to preserve their inviolability, and to call upon their own laws to punish them on their recal.

Secondly,—It is the Prerogative of the Sovereign to make treaties, leagues, and alliances with foreign states. Whatever contract she engages in, no other power in the kingdom can legally delay, resist, or annul. But, lest this power should be abused, our Constitution has opposed a check by Parliamentary impeachment for the punishment of those ministers who shall have advised such measures.

Thirdly,—She has the sole prerogative of making war and peace. Whatever hostilities are committed by private citizens, they do not affect the State, unless the State by countenancing and encouraging them, makes itself a partner to them. It is neces-

sary, therefore, that War and Peace should be proclaimed by the Royal authority, in order that all parts of the nation may be bound by it. Besides the check of Parliamentary impeachment in beginning, conducting, or continuing a war, there is another of still greater importance, the power residing in the House of Commons of refusing the pecuniary supplies to carry it on.

Fourthly,—The Sovereign has the power of granting letters of marque and reprisals, which are a part of the preceding power, and are merely synonymous with the right of proclaiming war. They are meant as a speedy commencement of hostilities, to prevent the losses which individuals might sustain from the enemy in the interval between the aggression on one side, and the proclamation of war on the other.

Fifthly,—The Sovereign has the power of granting letters of safe conduct. No individual of a nation, at war with another, can enter into each other's territory, without the danger of being seized, unless he has letters of safe-conduct. Passports under the sign manual of the Sovereign, or licenses from Ambassadors abroad, are now more usually obtained.

Respecting our Domestic Government or Civil Polity.

First,—It is the constituent part of the Supreme

Legislative Power, to have the Prerogative of rejecting such Bills as the Parliament shall present, and as the Sovereign shall judge improper.

Secondly,—The Sovereign is the first in military command, and has the sole authority to raise and regulate the Fleets and Armies. This authority includes the direction of all fortified places, of all Sea-ports and Havens, Beacons and Light-houses; the power of prohibiting the exportation of Arms and Ammunition, and of issuing a writ out of Chancery, to prevent any of her subjects from leaving her kingdom. This is now generally done by issuing a Proclamation, laying an embargo on all Shipping at any particular port or place; the writ to prevent any person from leaving the kingdom, being now generally considered as the first process out of Chancery in an action, similar to a Writ of Arrest in Civil causes.

Thirdly,—She is the Fountain of justice. That is, she is not the author or original, but the dispenser of it according to the laws. She does not sit in person, but delegates her authority to the Judges of the land and other subordinate Magistrates. In all criminal proceedings she is considered the Prosecutor; as all offences however directly against individuals, are indirectly against the Peace, Crown, and Dignity of the Sovereign.

Fourthly,—The Sovereign is also the Fountain of Honour, Office, and Privilege; not as the dispenser only, but as the author of them, as she may bestow titles, honours, and privileges, upon whom, and when, she pleases.

Fifthly,—She is the Arbiter of Commerce. Not only of Foreign Commerce of conjunction with Parliament, but of Domestic Commerce, such as the establishment of Marts, Markets, and Fairs; of the regulation of Weights and Measures; of the Coining of Money, and of the materials of which it shall be made; and of the Value and Stamp it shall bear.

Sixthly,—She is the Supreme Head of the Church; and in virtue of her authority convenes or dissolves all Ecclesiastical Synods and Convocations. She has the sole right of nominating Bishops, and other Ecclesiastical dignitaries; and to her in Chancery an appeal lies in all Ecclesiastical causes.

Yours, &c.

LETTER VIII.

RIGHTS OF PERSONS.

3. OF THE ROYAL REVENUE.

HAVING, in my last Letter, explained to you those branches of the Sovereign's Prerogative, which contribute to her Royal Dignity, and to the Executive Power of the government; I now proceed to those Prerogatives which regard her *Revenue*, and which the British Constitution has vested in her person, in order to support that dignity and power. This Revenue is either *ordinary* or *extraordinary*. The former is that which has subsisted in the Crown from time immemorial. The latter is that which has been granted by Parliament by way of purchase for such Hereditary Revenues as they took in exchange, or granted in addition, in order to support the dignity of the Throne, and the expenses of the State.

THE ORDINARY REVENUE.

This in many cases is merely nominal; and I shall, therefore, very cursorily describe it, and

then proceed, in my next Letter, to the second Branch of the Royal Revenue, by far the most extensive and important.

First Source of the ordinary Revenue. The custody and enjoyment of the *temporalities* of Bishopricks when vacant. This was formerly a source of wealth to the Sovereign, who kept the appointment vacant, in order to obtain the Revenues. This, however, is now merely nominal, as, when the Bishop is consecrated and confirmed, the temporalities are always restored to him.

Second.—The Right of sending one of the Royal Chaplains to be maintained by the Bishop till he receives a benefice. This has fallen into disuse, but is probably the origin of the right which the Crown possesses, of presenting to the living, vacated by the Bishop on his being elevated to that Dignity.

Third.—A Right to *Tithes* in extra-parochial places; this exists no longer.

Fourth.—A Right to the *first fruits*, or to one year's profits; and to the tenths, or to a tenth of the annual profits of all Spiritual Preferments. This tax was paid by the Clergy to the Pope during the time that the Roman Catholic Religion was the religion of the land, until the beginning of the Reformation in the time of Henry VIII., when

our Sovereign being the Supreme Head of the Church, received the first fruits and tenths in that character. Many alterations in the law were enacted to exempt livings under a certain value from paying this tax; till at last by a statute of Queen Anne, all the first fruits and tenths were given up by the Crown, and appropriated as a fund, to increase the poor livings of the Clergy, which is generally known by the name of Queen Anne's bounty.

Fifth,—The profits of the *Demesne Lands* of the Crown. These were originally very great; but are now almost nothing, being granted away to private individuals.

Sixth,—The Profits arising from *Military Tenures*, such as the right of having Provisions and other necessaries at an appraised valuation; of forcibly using the carriages and horses of the subject whenever the Sovereign wanted them. All these rights are now abolished, and an equivalent settled on the Crown in lieu of them.

Seventh,—The Profits arising from *Wine Licenses*; also abolished.

Eighth,—The Profits arising from *Fines and Amercements* in the Royal Courts of Justice, and certain fees in a variety of legal matters. These

are granted to private individuals, or appropriated to particular officers of the Courts. They have been much curtailed by a recent act, and in many instances an equivalent in lieu of them, in the shape of salary, is paid out of the Consolidated Fund, much to the advantage of the suitor.

Ninth,—The Profits arising from the *Royal Forests*: chiefly consisting of fines, levied on offenders against the forest laws. These are now abolished.

Tenth,—The Right to *Royal Fish*, such as Whale and Sturgeon, caught or thrown upon the coast; a very ancient, though now merely a nominal Prerogative.

Eleventh,—The Right of Property in *Shipwrecks*. This right is supposed to be for the purpose of protecting such property for the legal owner; for by the law the Sheriff is bound to secure it from pillage, and if not owned for a year and a day, it then belongs to the Sovereign. This rarely happens, as the owner generally claims it within that time. Many statutes have been since enacted to protect property from being plundered, in consequence of shipwreck.

Twelfth,—The Right to *Mines*; this has its origin from the Royal Prerogative of coining

money, as affording to the Sovereign materials for that purpose. It extends only to Silver and Gold.

Thirteenth,—*Treasure trove*, or the right of all Treasures hidden *in* the earth, unless the original owner claims them. All Treasure found *on* the earth belongs to the finder, till the owner also claims it. And the reason of this distinction is; Treasure hidden *in* the earth is not supposed to be abandoned; therefore the Sovereign takes it for safe custody till the owner is found; whereas all Treasure found *on* the earth is either lost or entirely abandoned, in which case the fortunate finder may retain it as his property, till claimed by the owner of it.

Fourteenth,—*Waifs*, or goods stolen, *waived* or thrown away by the thief in his flight. These belong to the Sovereign till the owner claims them.

Fifteenth,—*Estrays*; or such animals as are found wandering or straying about. These belong now to the Lords of the Manors where they are found.

Sixteenth,—*Forfeitures of Lands and Goods for offences*. The reason of this is, that as property is originally derived from Society, if any Member transgresses those laws, and that contract which is supposed to have been entered into on the forma-

tion of civil Society ; it is just that his property should revert to the original fund from which he received it. One species of these forfeitures, however, does not result from crime, though frequently from negligence or misfortune. As when a person is killed by the negligent or accidental conduct of another: in such case the instrument or immediate cause of the death of the person was, until a late period, forfeited to the Sovereign, to be used for pious purposes, and was then called a *Deodand*, or thing *given* to the service of *God*. These Deodands caused many subtle and absurd legal distinctions; for example, where a thing not in motion was the occasion of a man's death, that part only which was the immediate cause, was forfeited; as if a man were climbing up the wheel of a cart, and were killed by falling from it, the wheel alone was a Deodand; but wherever the thing was in motion, not only that part which immediately gave the wound (as the wheel which ran over his body), but all things which moved with it, and helped to make the wound more dangerous (as the cart and loading which increased the pressure of the wheel) were forfeited.

These Deodands have been altogether abolished by the statute 9 & 10 Victoria, ch. 62.

Seventeenth—Escheats of lands; which take place when no heirs are found to succeed to an inheritance. This is on the same principle as forfeitures

for offences, the Sovereign being considered in law as the original proprietor of all the lands in the kingdom.

Eighteenth.—The custody of Idiots and Lunatics. These are committed to the care and management of the Lord Chancellor, not as Chancellor, but under the special authority of the Sovereign, who may delegate the authority to any person she pleases. Thus upon every change of the Great Seal a special authority is given to the Chancellor under the Royal sign manual.

These are the *ordinary* Revenues of the Crown which, though formerly of importance, and might have been increased to a formidable extent, yet owing to improvident management, and other causes, are sunk to nothing, being almost all of them alienated, lost, or disused: to make up, therefore, this deficiency, and to enable the Sovereign to support her dignity, and to carry on the affairs of government, a revenue is granted to her by the Commons of Great Britain in Parliament assembled, which will be the subject of my next Letter.

Yours, &c.

LETTER IX.

RIGHTS OF PERSONS.

OF THE ROYAL REVENUE.

THE extraordinary Revenue of the Crown consists of taxes, imposed by the Commons in Parliament assembled, and which, having received the assent of the House of Lords and the Sovereign, constitute those supplies which are raised for the expenses of the State. These supplies are either *perpetual* or *for a limited period*.

The *perpetual taxes* are,

First,—The Land Tax, which has superseded all the ancient methods of rating Property, and Persons in respect of Property. This formerly was effected by persons paying a certain proportion of their goods to the use of the Sovereign. The money thus raised consisted of either tenths or fifteenths, subsidies on land, hydage, scutage, or talliage, which were different names for the sums of money, raised on persons holding by different tenures, and were all certain and ascertained proportions of

property, due from each person towards defraying the expenses of Government. All these, however, were incorporated, about the year 1693, into one general tax, called the Land Tax, a new assessment or valuation of Estates having been then made throughout the Kingdom. The tax continued for some time an annual charge upon the subject, but at last, by a statute passed in the 38th year of George the Third, it was converted into a perpetual one, and fixed at four shillings in the pound, subject, however, to redemption by the Landowner.

Secondly,—The *Customs* or duties payable by authority of Parliament on Merchandise exported and imported. These taxes, though payable immediately by the Merchants, yet are ultimately paid by the Consumers, for the duties are confounded with the price of the article and become part of its cost. Hence it is clear that the higher a duty is, the dearer will be the commodity according to its intrinsic value, as all those persons, through whose hands it passes, expect a profit from it, and, therefore, these imposts, if too heavy, will be a cramp and check upon trade, and give rise to smuggling and other illicit practices.

The duties on several articles which enter largely into the use or consumption of the people, as *e. g.*, tea, tobacco and sugar, are very high, and these may be considered among the necessities of Life, to the

cheapening of which the Legislature has lately directed its attention ; it is to be hoped therefore that the heavy pressure of some of these duties, upon the productive classes of society, may, before long, be materially lightened. In the case of sugar, a considerable abatement of the duty has already taken place.

Thirdly,—The, Excise Duty. As the Customs are a tax upon the merchant who imports, so this is an inland imposition on the consumption of the commodity, paid sometimes on its consumption, and sometimes on the retail trade of it. The Excise duty was first established in 1693, and from a few articles, that were at first subject to it, the list has increased to such an extent, that it has included almost all the luxuries, and most of the necessaries of Life. The principal tax connected with the Excise is the Malt Tax, which is a duty of 2s. 7d., and 5 per cent. on every bushel of Malt; and among other articles of consumption or use, subject to the Excise Laws, are Spirits, Soap, Hops, and Vinegar. The Legislature has lately taken off the duties on Bricks and Glass, and thereby enlarged the comforts of the subject, by cheapening and facilitating the construction of his dwelling, and by increasing the accommodation of light, which contributes so materially to his health and cheerfulness. The duty on lands and goods, sold by auction, forms also part of the Excise Duty. These taxes are

under the management of Commissioners of Excise, whose subordinate officers are distributed throughout the country for the collection of them.

Fourthly,—The *Post Office Duty* for carriage of letters; although this duty owes its first introduction to the same Parliament to which we owe that of the Excise, *viz.* 1643, yet it was not till 1657 that a regular Post Office was erected, by the authority of the Protector, upon nearly the same model as has ever since been adopted. The Post Office was further improved after the Restoration by the statute 12 Charles 2, ch. 35. The duty upon Letters is the most eligible method of taxing the subject, because the Government acquires a Revenue, and the people execute their business with greater ease, cheapness and dispatch, than they could possibly do if no such tax existed. The duty was formerly paid upon each letter according to distance, and produced a very considerable Revenue, while the advantages attending the security of communication made the tax be submitted to cheerfully and without complaint. But it being considered that the expense of Postage formed a great embarrassment and clog to commercial transactions, an act passed in the 3rd and 4th year of her present Majesty (ch. 96), which reduced the rate of postage to a low and uniform sum. The alteration has operated very sensibly upon this branch of the Public Revenue, for

although the number of letters has increased very considerably in every part of the kingdom ; yet the sum collected for postage falls far short of what it did formerly.

Fifthly,—The *Stamp Duty* ; which is a duty on all Parchments and Papers, whereon any legal proceedings, bills of exchange, or other mercantile securities are written ; upon newspapers, cards, dice and licenses of various descriptions as, for example, Hackney and Stage Carriage Licenses, Hawkers' Licenses, &c.

Sixthly,—The *Duty upon Houses*. This was formerly the Window Duty, on many accounts a very objectionable tax ; but the present tax has been substituted for it by an act passed in 1851. Under this head may be ranged all the long list of Assessed Taxes, which comprise the duties on servants, horses, dogs, carriages, armorial bearings and game certificates. These, as well as the taxes upon stamps, comprised under the last head, are managed by the Commissioners of Stamps and Taxes, who form one Board under the provisions of the 4 & 5 William 4, ch. 60.

Seventhly,—The *Duty on Pensions and Offices*. This was first created by statute 31 George 2, ch. 22, and comprises all salaries, fees, and emoluments of Offices and Pensions payable by the Crown above the value of 100*l.* per annum.

The *eighth* is a tax created for a *limited period*, viz.: *The Property and Income Tax*, imposed by the 5 & 6 Victoria, ch. 35, for a period of three years from its commencement, and which is a duty of 7*d.* in the pound upon all incomes arising from Land or Personal Property, or the profits of Trades and Professions, beginning at an income of 150*l.* per annum. It has since been continued from time to time, and when it shall have been subject to certain modifications, rendered necessary by the manifest injustice of subjecting certain and uncertain incomes to the same amount of duty, it has every chance of being rendered a perpetual tax.

The clear net produce of these taxes, after the charge for collecting and managing them is paid, is appropriated to the expenses of the Government.

The first and greatest charge is the payment of the interest on the National Debt, called the Funds. The funded debt of the United Kingdom amounted in the past year to 771,967,222*l.* 10*s.* 7*d.*, and the interest upon it to 27,620,449*l.* 17*s.* 9*d.* The National Debt arose at first from the impossibility of the Government raising by taxes, within the year, such a sum as would defray the annual expenses of Government, more particularly when, in time of war, it had to provide for the extraordinary defence of the country. To obviate this difficulty, sums of money were borrowed from individuals for the current service of the State; and in return Government gave those individuals

an acknowledgment that it owed them the money borrowed ; which acknowledgment or security bore a certain interest, payable half yearly to the holder of it. Such taxes, therefore, as were sufficient to defray this annual interest, were alone imposed upon the people ; and by these means the principal debt or sum borrowed was converted into a new species of property, transferable from one person to another, at any time, and in any quantity.

This was the foundation of the National Debt ; a debt which has arisen from a comparatively trifling sum, to the enormous amount of nearly Eight hundred millions of pounds sterling ; and which is due from the nation at large to such persons as have lent sums of money for the above purposes ; or to such as having bought the securities, stand in the same situation and are entitled to the annual interest. As long as these securities, or national promissory notes, are transferable, and Government pay the interest (for the principal sum only exists on paper), so long will the national credit be maintained ; and, consequently, the Funds which are supported only on public faith and parliamentary security, will rise or fall accordingly.

The respective produces of customs, excise, stamps, and several other taxes, were originally separate and distinct funds ; being securities for the sums advanced on the produce of each tax, and of that alone. But in 1787 they were blended together, and, along with the South Sea Fund, now form

one united fund, called the Consolidated Fund, which extended to Ireland by a subsequent Act, is now called the Consolidated Fund of the United Kingdom.

That which has just been spoken of constitutes the Funded Debt, and also comprises the new $3\frac{1}{4}$ per cents., and the $3\frac{1}{4}$ per cents. reduced, which will be ultimately reduced to 3 per cent., and also certain annuities held for terms of years. In addition to the above there is what is termed the *Unfunded Debt*, which is secured by instruments, called Exchequer Bills, and which are engagements on the part of Government to repay certain sums of money, at a certain period, with interest in the mean time. The Unfunded Debt amounted in the past year to 25,185,954*l.* 18*s.* 1*d.*

We have observed that the first charges on the supplies, raised within the current year, are for payment of the Interest on these public securities, called the National Debt.

The next charge upon these taxes is applied to defray the civil list of the Sovereign; the grant to his Royal Highness Prince Albert, as Her Majesty's Consort, and also all such expenses as relate in any way to civil Government. Among the first are comprised the expenses attendant upon the maintenance of the Queen and Royal Family in a dignity becoming their exalted station; also the expenses of the Household, and Salaries of the Officers and Servants of the Court; among the

last are Salaries of the Judges, Salaries to Ministers of State, and all disbursements incurred in the Administration of Justice.

The remainder of the produce of the taxes is applied to the expenses of the nation in carrying on the Government. The surplus beyond the actual expenditure of the State is by 10 George 4, ch. 27, sect. 1, vested in a Fund, called the Sinking Fund, because some of those securities which Government had given for money borrowed, are bought with it, and by the nation's thus repaying some of its debt, the quantity of what is left is sunk or diminished; but as money is often borrowed, as was unfortunately of necessity the case when the great distress in Ireland lately called for the interference of the Legislature, and instead of being paid off by taxes temporarily created for that purpose, is added to the Funds; the National Debt has gone on still increasing, notwithstanding securities, to a considerable amount, have been at various times cancelled by the Sinking Fund.

Yours, &c.

LETTER X.

RIGHTS OF PERSONS.

OF SUBORDINATE MAGISTRATES.

In treating of the Powers and Duties of the Subordinate Magistrates of the State, I shall not now inquire into the power and authority of the Lord Chancellor or the Judges, because they will be noticed when I explain to you the nature of the Criminal Law of the Land; nor shall I enter into a disquisition respecting the rights and duties of Mayors and Aldermen, as these are often rights depending on the constitution of their respective Charters. But I shall consider those Magistrates who are general throughout the kingdom; such as Sheriffs, Coroners, Justices of Peace, Constables, Surveyors of the Highways, and Overseers of the Poor. Their Antiquity and Origin, their Appointment and Removal, and their Rights and Duties, will be the subject of this Letter.

Sheriffs.

The office of Sheriff (shire-reeve), from two Saxon words *Scire Gorefa*, is of great antiquity, he

being the deputy of the Earl, who formerly had the entire care of the county, and conducted all the business of the Sovereign in it. At the present time, the Earl's office is only nominal as far as the legal administration of matters in the county is concerned, with the exception of where as Lord Lieutenant he nominates Justices of the Peace, but legal proceedings are carried on in the name of the Sheriff alone; and by his authority every civil process is conducted. He is appointed by the Sovereign in Council; and his name is one of three proposed to her for her nomination, which have been previously selected by the Judges, the Chancellor of the Exchequer, and some of the Privy Council, on a day annually appointed for that purpose. Sheriffs continue in office for one year only, or until the appointment of their successors; and they cannot serve the office a second time within three years of their first appointment if there be others sufficient within the county. A Sheriff now never fills the office twice; it being a duty attended with great expense and trouble.

In his *judicial* capacity he is head of the Sheriff's Court, in which causes are tried to recover a certain limited value, and in which a jury is often summoned to award compensation in cases of damage inflicted upon individuals by public companies. This he does by deputy. He returns the Members for the County, Coroners, and Verderors, and, either in his own person or by deputy, presides at their several elections.

As Keeper of the Queen's Peace he is the first in rank in the County, excepting the Lord Lieutenant, who is head of the Military Power. He has all the powers of a Justice of the Peace, in apprehending and committing for offences against the Queen's Peace. But, if himself a Justice of the Peace, he cannot, during the continuance of his office as Sheriff, act in criminal cases, or in the ordinary capacity of a Magistrate. He must defend his county against all the Queen's enemies; and, for this purpose, may summon all the people in the county, under the degree of a Peer, to attend him, and every person so summoned is bound to obey. This is called the *Power of the County, or Posse comitatus.*

In his *ministerial* capacity, he executes all processes issuing out of the Royal Courts of Justice. In all causes he serves the writ, he arrests, and takes bail; summons the jury, and sees that the Judgment of the Court is carried into execution. In criminal matters, he arrests and imprisons, returns the jury, has the custody of the prisoner, and executes the sentence of the Court.

As the Queen's Bailiff, it is his business to preserve the rights of the Sovereign within his County or Bailiwick.

Under the Sheriff are many inferior officers, as the Under Sheriff, Bailiffs, and Gaolers.

The *Under Sheriff* generally performs all the duties of the Sheriff, except those of Dignity and Parade, which the Sheriff executes himself.

The *Bailiffs* or Sheriff's Officers are either Bailiffs of Hundreds or Special Bailiffs. Bailiffs of Hundreds, in general, summon the Juries, attend the Judges and Justices at Sessions. The Special Bailiffs execute the writs, and make the arrests and executions.

Gaolers are the Servants also of the Sheriff, and though appointed by him, are paid by the County. Their business is to keep in safe custody all persons committed to them by lawful warrant. The Sheriff is answerable for their escape, and, therefore, the Gaoler always gives bond to the Sheriff for the due execution of his duty.

Coroners.

There are particular Coroners for every County, generally four, and sometimes six. They are chosen for life by the Freeholders in the County Court, and may be removed by their holding the offices of Sheriff or Verderor, which are incompatible with their duty as Coroners. Verderors are officers in the Royal Forests, and so called from its being their duty to look after the *vert*, from the French word *verd*, signifying a covert for deer. The duty of a Coroner is chiefly *judicial*; and consists in inquiring into the circumstances of the death of any person who has been slain or killed accidentally. A Jury is summoned to view the body, and return such verdict as shall appear right from the evidence of the manner of his death. If a verdict of Murder or Manslaughter is recorded, he is bound to com-

mit the accused to take his trial. In his *ministerial* capacity, he is only the Sheriff's substitute, when the Sheriff, through personal interest, cannot act. On this ground it is, that a writ of arrest, issued against the sheriff for debt, is served by the Coroner.

Justices of the Peace.

The Lord Chancellor, the Judges, the Sheriff, and many persons from their office, are general conservators of the peace throughout the Kingdom. The Justices of Peace, by the special commission of the Sovereign, are those gentlemen in a county whose names are included in the commission, and must have a qualification of the annual value of 100*l.* to enable them to act. Their office being conferred by the Sovereign, so it is determinable at her pleasure; and it may be so by the demise of the Crown, or six months after, by express writ under the Great Seal, or by a new commission which annuls the old one. This office is to preserve the Queen's peace, by committing for a breach of it; by taking securities of the peace, or by apprehending, by warrant, felons or other criminals. Two or more justices may hear and determine felonies at the Sessions.

Constables

Are of two sorts, High Constables, and Petty Constables. The former are appointed at the

Court Leets of the hundred to which they are appointed. The latter are inferior officers in every town and parish, and are appointed by the Justices. Their general duty is to keep the Queen's peace, and to execute the warrants of the Justices.

Surveyors of the Highways.

All parishes are bound, by common law, to keep their roads in good repair. The Surveyors of these roads are nominated by the respective parishes, and appointed by the Justices; and their duty is to superintend the care of the roads, employ persons to work upon them, remove obstructions and nuisances, and collect the rates of the parish for defraying the expenses.

The Overseers of the Poor

Are nominated by the parish in vestry assembled, and are approved by the Magistrates. Their office or duty is to collect the rate assessed upon the inhabitants of the parish for the relief of the poor, and to relieve with it all those who are proper objects for relief and assistance. It is impossible and quite unnecessary to explain to you the very intricate laws relating to the poor, and the various ways by which a pauper becomes chargeable to any particular parish in preference to any other. I shall only add, that as long as any person *resides* in any particular parish, and wants relief, that parish is bound by law to support him; but if such

person, though he resides in one parish, yet shall by one of the various means which the law has pointed out, have become a parishioner of another parish, then the Overseers of the Poor in the parish where he resides may take him before two Justices of the Peace, who may remove him to his own proper parish or place of settlement; and there he must remain, to be supported and relieved according to the exigencies of his case. If the Justices have mistaken the law, or through concealment of facts have removed him to the wrong parish, the Sessions, on an appeal to them, will disannul the order of the Justices, and the pauper must be again removed to the right parish. In such cases an appeal ultimately lies from the decision of the Quarter Sessions to the Court of Queen's Bench.

Yours, &c.

LETTER XI.

RIGHTS OF PERSONS.

OF THE PEOPLE.

THE most obvious division of the people is into subjects, who, being born in England, owe a natural allegiance to the Sovereign, and into persons, who, being born in another country and under another government, yet as long as they continue in England owe the same allegiance to the Sovereign as her own subjects. All the people of England owe this allegiance to their Sovereign, from the very nature of the compact between them; and, although express words and forms of oaths have been enjoined to remind the subject of this previous duty, yet the obligation is not increased, but only strengthened by them. An *alien*, therefore, owes a local and temporary allegiance to the Sovereign of this Kingdom as long as he resides in her territory, which ceases as soon as he returns to his own. A *native* owes a natural and perpetual allegiance, which can only cease with his life. The rights also of natural-born subjects and of aliens are different, inasmuch as those of the former are perpetual, those of the latter transitory; in the one case not

to be destroyed but by their own misconduct, in the other terminable with their residence. Aliens, therefore, have not the same privileges as the Queen's subjects, as the very circumstance of their allegiance being temporary and their rights being permanent would be a contradiction. A *denizen* is an alien who, having come into the Queen's territory to remain, has obtained an Act of Parliament to *naturalize* him, or to give him all the rights of a native subject. The word signifies that he has obtained this privilege by grant or *donation* of the Sovereign.

The people, whether aliens, denizens, or natives, are divisible into two kinds,— the Clergy and the Laity.

First,—THE CLERGY.

The Clergy, till the Reformation, had, under the Papal Supremacy of the Church, many privileges and exemptions which have been lost or taken from them; for, under the Popish establishment, they grasped at so many more rights than the law allowed them, that they lost most of those which they had already. Their personal *exemptions* indeed, for the most part, continue: such as being excused from serving on juries, and from serving many of the municipal offices, which the Laity are bound to fill. They have also some *disabilities*; for they cannot sit in the House of Commons, nor engage in any trade or merchandise. There are

divers ranks and degrees in the frame and constitution of ecclesiastical polity, which I shall consider merely as they are noticed by the laws of England, without intermeddling with the Canons and Constitutions by which the Clergy have bound themselves. And in doing so, I shall consider the Method of their Appointment; their Rights and Duties; and the manner in which their office may cease and determine.

An *Archbishop* is elected by the Chapter of his Cathedral Church, by virtue of a license from the Crown. The Crown having the power of nominating, which is executed by a letter missive containing the name of the person to be elected, the election is, in fact, solely in the hands of the Sovereign. The Archbishop is the head of the Clergy in his diocese. On receiving the Queen's writ, he calls the Bishops and Clergy of his province to meet in convocation. All appeals from inferior jurisdictions in his province are made to him. He presents to all ecclesiastical livings in his province, if not filled within six months after they have become vacant. He has the privilege of crowning the Kings and Queens; and he can grant dispensations in any case which are not contrary to the Holy Scriptures, and to the laws of God, where the Pope formerly used to grant them.

The power of *Bishops* consists, principally, in inspecting the manners of the Clergy within their diocese; they have Chancellors, who hold their

Courts under them, and other ecclesiastical officers. They also ordain to Holy Orders, institute, and direct induction to all ecclesiastical livings within their dioceses. Archbischopricks and bishopricks become void by death and resignation.

A *Dean and Chapter* are the council of the Bishop, to assist him in affairs of religion, and celebrate Divine Service in the Bishop's Cathedral. They are elected by license from the Sovereign, in the same manner as Bishops, and are themselves the nominal electors of the Bishops. Deaneries and prebendaries may become void by death, resignation, or by being elected to higher dignities. The word Chapter, from the Latin *Caput*, signifies an assembly of the Heads of the Church.

An *Archdeacon* hath an ecclesiastical jurisdiction, originally derived from the Bishop, but independent of him. He visits the Clergy, and has his separate Court for punishment, by spiritual censures.

Rural Deans are very ancient officers of the Church; they were originally deputies of the Bishops, to inspect the conduct of the Parochial Clergy, to inquire into and report the state of the Parochial Churches. Although they had become almost obsolete in Blackstone's time, yet, latterly, they have resumed that active sphere of useful duties for which they were primarily intended.

Parsons and Vicars.—A *Parson* is a Clerk in Orders, who has all the rights of the Church, and

is the same as Rector. He holds all the tithes of his living, both great and small. A *Vicar* is a Clerk in Orders, who holds only the small tithes, the great tithes being still in the hands of the lay Impropriator. The method of becoming Parson or Vicar is the same. They must be in Holy Orders; must be presented to the living, instituted, and inducted. They must be twenty-three years of age before they can be Deacons, and twenty-four before they can be Priests or in full Orders. Their duties are the same, and are so numerous, that it would be impossible to recite them with accuracy and conciseness. I shall only mention one, *viz.*, *Residence* in their parishes. They are bound to reside in their parsonage, if there is one; if not, in their parish. Some, indeed, are exempted from residence, in cases where they have other duties to attend to of a more urgent nature; as Chaplains to the Queen, Heads of Houses, and Professors in the two Universities; or where they are allowed to retain more livings than one, in which case they reside partly in one parish and partly in another. There are various ways by which a Clerk in Holy Orders may cease to be a Parson or Vicar; by death, resignation, or deprivation, and also by taking another benefice, unless they obtain a dispensation from the Archbishop.

A *Curate* holds the lowest degree in the Church, being an officiating Minister, at a salary, to assist the Parson or Vicar. There are other ecclesiastic-

tical officers of whom the common law takes notice; such as

Churchwardens, who are the guardians of the Church, and representatives of the body of the parish. They are appointed by the Minister and by the parishioners in vestry assembled. Their office is to repair the Church, and make rates and levies for that purpose. They are also joined with the Overseers in the care and maintenance of the poor.

Parish Clerks and *Sextons*, (from the French *Sacristain*), have freeholds in their offices. They are generally appointed by the Incumbent, and sometimes by the Inhabitants. If the freehold issues out of lands to the amount of 40*s.* per annum, this gives them a qualification to vote at elections.

Secondly,—THE LAITY.

The Laity may be divided into the Civil, the Military, and the Maritime.

The *Civil State* consists of all those who do not come under the denomination of Clergy, nor Military, nor Maritime, and may be divided into the *Nobility* and *Commonalty*. Of the Nobility, consisting of the Lords Spiritual and Temporal, I have already treated in my Fifth Letter; I shall now only consider them according to their titles of honour.

THE NOBILITY.

A *Duke*, though inferior in antiquity, yet is the first in rank, being next to the Royal Family. The word is derived from *Dux*, which signifies a leader of Armies.

A *Marquis* is the next degree of Nobility. His office was formerly to guard the marches or frontiers of the Kingdom, from the word *Marche*, a limit.

An *Earl* is the most ancient title of Nobility. He was called by the Latins, *Comes*, from being the attendant of the Sovereign; and was for some time after the Conquest, called *Count*; but that name soon fell into disuse, though the shires, over which the Earls anciently presided, are still called *Counties*. The name of Earl is now a mere title, having nothing to do with the Government of the County, which has entirely devolved on the Earl's deputy or Sheriff, the *Vice Comes*.

The *Viscount* or Vice Comes, had no office appertaining to that dignity; but the word proves how highly the dignity of Sheriff was formerly esteemed, his name being thought an honourable title of Nobility.

A *Baron* is the most general title of Nobility. It is supposed to have been formerly the same with that of our Lords of Manors, whose Courts are called *Court-Barons* to this day. By degrees the title was confined only to the greater Barons, or Lords of

Parliament, and there were no other Barons among the people but those who were summoned by writ in right of their Baronies: but now it is conferred on divers persons by letters patent, and these are the two ways by which Peers are now created.

There are many privileges and incidents inherent in Peers, exclusive of those attached to them as Members of Parliament. They are to be tried in cases of treason and felony, by their Peers. If a woman, noble in her own right, marries a Commoner, she still remains noble; though, if she has become noble by marriage, she loses by a second marriage what she gained by her first; nevertheless by courtesy, when a woman, who is by birth a Commoner, marries one of the Nobility, and afterwards a Commoner, she retains after her second marriage the title she acquired by her first. A Peer or Peeress cannot be arrested in civil actions; a Peer gives his judgment not on oath, but upon honour; but when examined as a witness, he must be sworn. A Peer cannot lose his dignity, but by death or attainder; although there was an instance in the reign of Edward 4, of the degradation of George Neville, Duke of Bedford, by act of Parliament, on account of his poverty, which rendered him unable to support his dignity. This, however, is a solitary instance; and while it shows the Power of Parliament, it also evinces how tender the Parliament has been in exercising so high an authority.

The Commonalty.

Knights of the Garter, or of St. George, first established by Edward 3, A. D. 1349, in imitation of some orders of a like nature, religious as well as military, which had been instituted in various parts of Europe. The number received into this Order consists of twenty-five persons besides the Sovereign, and it has never been enlarged. This badge of distinction continues as honourable as at its creation, and is a prize eagerly aspired to by the greatest subjects in the realm. The origin of the order and of its motto is to be found in the gallantry of a chivalrous age, and is too well known to be repeated. The honourable Society of the Order of the Garter, is a College or Corporation, having a great seal. The site of the College is the Royal Castle of Windsor, with the Chapel of St. George, and the Chapter House in the Castle for the solemnities of the Knights on St. George's day, and at their feasts and installations. Besides the Sovereign and twenty-five companions, they have a Dean and Canons, and also twenty-six poor Knights. These last have a daily allowance in respect of their prayers to God and St. George. There are also certain officers belonging to the order; the Prelate of the Garter, who is always the Bishop of Winchester for the time being, the Chancellor of the Garter, now the Bishop of Oxford; the Registrar, who is always the Dean of Windsor: the principal King at Arms, called Garter, to arrange and

manage the solemnities : and the Usher of the Garter, who is also Usher of the Black Rod.

Knight Banneret ; A dignity which is conferred on one who is knighted by the Sovereign under the Royal Banner on the field of battle. As our Kings never now command their armies in person, this dignity is never conferred.

Baronet, a dignity of Inheritance, created by letters patent ; instituted by James 1, A.D. 1611, in order to raise a sufficient sum for the reduction of the Province of Ulster. Hence a Baronet bears in addition to his own achievements, the arms of *Ulster* ; viz., the Bloody Hand.

Knights of the Bath, an order instituted by King Henry 4 at his coronation, and revived by George 1, A. D. 1725, who erected the same into a regular military order, by the name and title of the Order of the Bath, to consist of thirty-seven Knights besides the Sovereign. The order has since been enlarged, in commemoration of the arduous contests which terminated in 1815, and is now composed of three classes, *viz.*, Knights Grand Crosses, Knights Commanders, and Companions of the Bath.

Knights Bachelors, the lowest, although the most ancient order ; for we read of King Alfred having conferred this dignity on his son Athelstan. This dignity is not hereditary ; it is conferred by the Sovereign's laying her sword on the intended Knight's shoulder, and telling him to rise, Sir A. B.

The word Knight is derived from the Saxon *Cniht*, and signifies a servant, *i. e.* one bound to

serve or attend the King in his wars. The word is still used in the same sense in one instance, viz., where we speak of Knights of a shire, that is those bound to serve or attend in Parliament, on behalf of a county.

In Latin Knights were called *equites aurati*, from the gilt spurs they usually wore; and also *milites*, soldiers, because they formed part of the Royal Army in virtue of their Feudal Tenures.

There are also other orders of Knighthood. The Knights of the Thistle, an honourable order in Scotland; and the Knights of St. Patrick, a badge of distinction in Ireland. There were also other orders of Knighthood, now extinct, as the Knights of Malta, the Knights Templars, and the Knights of St. John of Jerusalem.

These are all the names of Dignity in the Kingdom. The next in rank are Esquires, *Armigeri*, those who bear coat armour, although before them rank Colonels, Sergeants at Law, and Doctors in the three learned Professions. No property, however great, gives a man the title of Esquire; but it must be attached to his name from his holding an office of Trust under the Crown; from his being a Justice of the Peace; from his being the eldest son of a Knight, or from various other causes. The eldest sons of Peers of Great Britain, though called Lords by courtesy, are only Esquires by law, and must be so named in all legal proceedings.

All below an Esquire are called Gentlemen, Yeomen, Tradesmen, Artificers, and Labourers,

though every person now assumes the rank of an Esquire, if he has property enough to place him above actual labour.

A Yeoman, strictly speaking, is he that hath Freehold Land to the amount of 40*s.* by the year ; he was formerly thereby qualified to serve on juries, and vote for Knights of the Shire. The term is no longer confined to Freeholders, but occupiers of Land as Tenants are also now usually called Yeomen.

Of the Military State.

This comprehends the whole of the Soldiery, or such persons as are peculiarly appointed among the rest of the people, for the safeguard and defence of the Realm. In former times all the lands in the Kingdom were divided into six thousand two hundred and fifteen portions ; and each portion was called a *Knight's Fee*, comprising about four hundred and eighty acres ; for which a soldier was bound to attend the Sovereign forty days at his own expense. In process of time this personal attendance was compromised for money, till at last, this military part of the Feodal system was abolished. Besides this military force, every man was obliged, according to his estate and degree, to provide a determinate quantity of arms, in order to keep the peace. Whilst these regulations continued in force, Officers were sent into every county to muster and array the inhabitants of the district. These Commissioners of Array were superseded by Commissioners

of Lieutenancy, who in substance, continued to have the same powers as the old Commissioners of Array. This is now the Militia of the County, under the command of the Lord Lieutenant. The men are raised by bounty or by ballot, and are bound to attend ; and also to serve in any part of Great Britain and Ireland. In time of peace, the Militia is only called out for a certain number of days, to be exercised and trained. This is the constitutional security, which the laws have provided for the public peace, and for protecting the realm against external and internal enemies.

But when the Nation is engaged in war, more veteran and more disciplined troops are necessary ; and, therefore an army is kept up under the authority of Parliament. In the time of Charles II., this army amounted to 5,000 men ; it was increased by James II. to 30,000 ; and it was therefore made one of the articles of the Bill of Rights, that the raising or keeping a standing army, within the Kingdom, in the time of peace, unless by authority of Parliament, was against law.

It is necessary, however, even in the time of peace, for the safety of the Kingdom, and the defence of the various territories annexed to it, to keep up a standing body of troops under the command of the Crown. This body would be disbanded every year, unless continued by Parliament ; and, therefore, an Act is annually passed, at the commencement of every Session, called the "*Mutiny Act*," by which these troops are retained and kept

organized, and certain regulations are laid down for their government.

Soldiers have certain privileges after their time of service is expired, as an encouragement and reward for their service. They have provision made for them if wounded or disabled, and may exercise any trade after they have served a certain time, in any town in the Kingdom, notwithstanding any charter or custom to the contrary.

The Maritime State.

The Royal Navy of England has always been its greatest defence and ornament; it is its ancient and natural strength, and has accordingly been assiduously cultivated from the earliest ages. I will not enumerate the various Acts which have been passed for its increase from the time of Richard I., to the Navigation Act of Charles II., but I will mention a few of the laws for the supply of the Royal Navy with Seamen, for their regulations, and for their privileges.

The Supply; This is created in various ways, *viz.*, by The Power of Pressing; which is founded in the Common Law, or immemorial Custom, and has been recognised by our Courts of Justice as part of the law of the land; by the apprenticing by Parishes of their poor to Masters or Merchantmen, with certain privileges: and the holding out great advantages to volunteer seamen, and to foreigners, who, by serving two years, become by such service, naturalized subjects. The

supply of our seamen has long received great prejudice from the custom of discharging them after each voyage, instead of giving them such employment at home as might make their services and naval experience ready at hand when required. This evil, so long complained of by naval officers, has now forced itself on the attention of the Legislature, with a view to the adoption of some plan for manning our Navy more consistent with the security of the Kingdom, and with common sense.

Their Regulations are laid down by express laws and articles, so that every offence is set down with its punishment, an advantage which they possess over the military, whose laws are framed from time to time at the pleasure of the Crown.

Their Privileges are the same as those of the Soldiers, and consist in their being relieved and supported when disabled or superannuated.

Yours, &c.

LETTER XII.

RIGHTS OF PERSONS.

1. OF MASTER AND SERVANT;
2. OF HUSBAND AND WIFE;
3. OF PARENT AND CHILD, AND
4. OF GUARDIAN AND WARD.

HAVING explained to you the rights and duties of persons in their *Public* relations of Magistrates and People: I shall now consider their Rights and Duties in their *Private* relations. The great relations in private life are, those of *Master and Servant*; that of *Husband and Wife*; those of *Parent and Child*, and those of *Guardian and Ward*.

1. THAT OF MASTER AND SERVANT.

The law of England abhors, and will not endure, the existence of Slavery within this nation; and, therefore, it has decided that the moment a Slave lands in England, it will protect him in the enjoy-

ment of his property and person. The service of a slave to his master must have been compulsory, inasmuch as from the very nature of his servitude, he could never have been possessed of the liberty of choosing, whether he would serve or not. It is therefore the chief ingredient, which makes a contract between a Master and Servant binding, that the servant has entered into it of his own free will and choice ; determinable by either party, according to the terms of their agreement. There are several sorts of Servants acknowledged by the Laws of England, which, after the contract has been once entered into, have laid down rules and regulations for the mutual benefit and advantage of both parties.

First,—Menial Servants: so called from their being domestics, *intrà mœnia*; they are generally hired by masters at a certain sum per annum: which hiring implies therefore a service for a year, though not expressly mentioned; and either party is at liberty to put an end to the contract by giving a month's warning, or a month's wages.

Secondly,—Apprentices; from *apprendre*, to learn; these are generally bound for a term of years, by a contract in writing, to serve their masters, who in return maintain them and instruct them in their trade. These contracts can only be put an

end to by mutual consent, or by the authority of a Magistrate on sufficient grounds.

Thirdly,—Labourers; these are hired by the day, week, month, or year: and such hirings are regulated by certain laws passed for that especial purpose.

The Law of *Settlement*, or the way by which any of the foregoing description of Servants become parishioners of any particular place, in preference to any other, depends on the terms, on which these several contracts have been entered into, and the manner in which they have been severally broken. I shall not enter into the intricate and voluminous laws on this subject, as it is quite foreign to the object of our correspondence. I shall, therefore, only add, that as long as the relation subsists between the Master and his Servant, so long does obedience on the one hand, and protection on the other exist; and it is on this principle, that the law allows a master to defend his Servant, or bring an action against any one who beats or maims him: and enjoins the Servant to protect the Master against those who attack him, or his property. It also makes the Master answerable for the acts of his Servant, if what the latter does is done with his Master's consent, either expressed or implied. The Master is also answerable for the negligence of his Servant, whilst he is on his Master's business; and although this responsibility may often be severe on an innocent man,

yet it is founded on the principles of Public Policy, in order to induce Masters to be careful in the choice of their Servants, and vigilant in watching their conduct whilst in their service.

2. THAT OF HUSBAND AND WIFE.

The second private relation of persons is that of Marriage, which includes the reciprocal rights and duties of Husband and Wife.

The *Holiness* of Marriage is entirely left to the Ecclesiastical Courts, which determine on the validity and unlawfulness of Marriage as a *Sin*; but the *Inconvenience* of Marriage, as a civil contract, is what alone is considered by our Temporal Courts, and as such they notice any breach of those laws which have from time to time been enacted for civil purposes. In this light, the law treats it as it does all other contracts, allowing it to be good and valid, if the parties are *willing*, are *able*, and actually *do contract*, in the proper forms and ceremonies required by law.

First,—How Marriages may be contracted.

Unless the parties are *willing*, it is perfectly clear that no marriage can be contracted; but they must also be *able*; in general, all persons are able to contract, unless they labour under some peculiar disabilities at the time of entering into the contract. These disabilities are of two sorts; *Canonical*, or such as have been laid down by the Canon Laws,

and which the Ecclesiastical Courts alone take notice of; such as a pre-contract, consanguinity, or affinity. The second sort of Disabilities are those created by the *Municipal* laws; and which have been adopted for the better order and government of Society, while they render all those contracts entered into contrary to them, absolutely void, and of no effect. These are, 1st, a *Prior Marriage*, still subsisting between one of the parties, and his or her wife or husband: in addition to this second Marriage being void, the party offending is liable to be transported or imprisoned.

2. *Minority.* This avoids generally all contracts, and therefore ought to avoid one of the most solemn and important.

3. *Want of Consent* of Parents or Guardians; by our laws, persons under age must have consent of their Parents or Guardians to be married by licence. But if they have not such consent, they may have the banns published in Church three times, and then, unless forbidden, their marriage will be legal.

4. *Want of Reason:* as Consent is necessary to Marriage, it is impossible that an Idiot or Lunatic can consent to what he cannot understand.

Parties must not only be willing and able, but must actually *contract* themselves in due form. There are various forms laid down by our laws to make a marriage legal. Such as, that the parties must be married by Banns or Licence: in a

Parish Church or Public Chapel; or other Building licenced for the Solemnization of Marriages, according to the Provisions of the Statute 6 and 7 William 4, ch. 85.

The ceremony must be performed by a Clergyman in Holy Orders. Hence it appears that all marriages are good which are celebrated by a person in Holy Orders—in a Parish Church or Public Chapel, or other Building duly registered according to the Provisions of the above Statute—in pursuance of Bans or a Licence—between single persons—consenting—of sound mind—of the ages of twenty-one, or under age, so that it be with the consent of parents and guardians.

The new Marriage Act above mentioned, also legalizes marriages solemnized between individuals not of the Church of England, by a certain declaration being made by the parties in the presence of the Registrar of the district appointed under the Act, and two or more credible witnesses.

Secondly,—How Marriages may be dissolved.

This is either by death or divorce; The Laws of England allow such divorces only, in cases of adultery, as will allow the parties to marry again; these divorces can only be obtained by Act of Parliament, and are so expensive, as totally to preclude the lower classes of society from ever obtaining them, even where it would be most desirable.

The Ecclesiastical Court allows divorces for

cruelty or improper conduct on the part of the husband or wife; but these divorces are not a dissolution of the contract, only a suspension of it.

Thirdly,—The legal Effects and Consequences of Marriage.

By Marriage, the husband and wife are one person in law, that is, the very existence of the wife, and all her rights are incorporated and consolidated with those of her husband. He is bound to provide for and support her. All her actions, and even her very will, are surrendered to him; so that whatever debts she contracts are the debts of the husband; and her very crimes, committed in his presence, excepting treason and murder, and felony accompanied with violence, are supposed to be done under his coercion. On this principle she cannot execute any deed during her life, nor devise by will at her death, except in the case of lands; all her property belonging to her husband.

The husband, by the old Law, was supposed to be allowed to give his wife moderate chastisement; but this right has been doubted, and is now seldom exercised. Whenever it is, the wife may sue out articles of the peace against her husband, and she may be protected, not only against actual ill usage, but even the threats of it.

3. OF PARENT AND CHILD.

The next and most universal relation in Nature,

is immediately derived from Marriage ; that of *Parent and Child*. Children are of two sorts ; *Legitimate*, or those who are born after the marriage of their Father and Mother ; and *Illegitimate*, or such as are born without any previous marriage.

4. LEGITIMATE CHILDREN.

There are several duties from Parents to their Children, and from Children to their Parents, which I shall treat of in succession :

The *Duties of Parents* consist in the maintenance of their Children, which is enjoined by Natural Law, as well as enforced by the municipal law of the land. Thus a Father and Mother, Grandfather and Grandmother, are compellable to support their children ; and if they run away, leaving them destitute, their goods and chattels may be seized under direction from the Magistrates at Quarter Sessions, and their persons imprisoned. The duty of *protection* is also a natural duty, which is thought to be so inherent in a Parent, that our law does not find it necessary to enforce it, but rather to check it when carried to excess. The last duty of Parents, is the duty of *Education* ; which is pointed out by reason, and is by far the most important of any. This is also left to the natural and rational feelings of the Parent, except in one or two instances, as for example, the binding of Parish Apprentices where the Parents have become chargeable to the Parish in which they reside, such binding being

either to the Sea Service, or to any other Trade at home.

The power of Parents over their Children, is derived from their duty. Among the Romans, the father could put his children to death; and among other nations on the Continent, this power, particularly as respects their marriage, extends beyond the age of discretion. With us, the power of a Parent is much more moderate, being only what is necessary to keep his child in order and obedience. This power ceases when the child is twenty-one years of age; but till then, even after the death of a parent, his power may be delegated to a guardian.

The *Duties of Children* are deducible from a principle of Natural justice and retribution; the Parents being entitled to all those attentions and support in their age and infirmities, which the Children received in the time of their own incapacity and weakness. Upon this principle, proceed all the duties of Children to their Parents, which are enjoined by positive laws.

ILLEGITIMATE CHILDREN.

Illegitimate Children are those who are born out of lawful wedlock; for the subsequent Marriage of the Parents does not by the English law render the Children previously born legitimate, although the law is otherwise in Scotland. This is consonant to right reason and justice; for otherwise

the Parents might, by marrying or not, as they pleased, confer rights upon their children which they had not before: and thus they would divest the most important and solemn of obligations of all its holiness, and make it, as a civil contract, subservient to interested and unworthy purposes. No future marriage of Parents, therefore, can make children previously born, legitimate: but the law considers them, as without any legal Parents. It has not, however, deprived them of all the advantages of legitimacy, as it compels their mother to maintain them up to the age of sixteen years, and their reputed father to contribute to their support. But having no legal parents, it is impossible they can *inherit*; and the only rights they can have, are those which they can *acquire*. They have no name, but such as they are generally known by, and belong to the Parish in which their mother is settled, but where she has not gained any settlement, then in the parish in which they were born; whereas legitimate children belong to the parish of their father.

4. OF GUARDIAN AND WARD.

The relation of Guardian and Ward bears a very near resemblance to that of Parent and Child. It is either by *nature*, when an estate is left to an infant; in which case the father is the natural Guardian. Or it is by *testamentary devise*, when a father appoints a Guardian for his children. The

power and reciprocal duties of Guardian and Ward, are similar to those of Parent and Child, and are evidently deducible from them. The infant is under the same subjection till the age of twenty-one years, and under the same disabilities in law.

Yours, &c.

LETTER XIII.

RIGHTS OF PERSONS.

OF CORPORATIONS.

I HAVE hitherto considered persons in their natural capacities and have treated of their rights and duties. But as all personal rights must necessarily expire with the person; and as it would be very inconvenient to be constantly investing persons in succession with the same rights as their predecessors, it has been found necessary for public purposes, in order to obviate this inconvenience, to invest a number of persons with the same rights, under the appellation of a Corporation. The individual Members, therefore, which compose a corporation, may die in succession, but the corporation itself retains its imaginary and artificial existence; and by supplying the place of those, who, by death, resignation, or any other cause, no longer continue members of it, it enjoys a legal immortality.

There are two sorts of Corporations, *aggregate*, and *sole*.

1. *Aggregate* Corporations are those which are

composed of many persons, and by being kept up by a perpetual succession, continue for ever; as the Mayor and Commonalty of a City; the Dean and Chapter of a Cathedral Church.

2. *Corporations Sole*, as the name implies, consist of one person only, as the Sovereign, a Bishop, and some Deans and Prebendaries. A Parson is a sole Corporation, as far as his rights as Parson are concerned; by which means all his rights, by not being *personal*, but merely *clerical*, are preserved entire to his successor.

Aggregate and Sole Corporations may be also *Ecclesiastical* or *Lay*. The former are such as are entirely composed of spiritual persons, as Bishops, Deans, Vicars, &c. &c.

Lay Corporations are either *civil* or *eleemosynary*. The *civil* are for temporal purposes, and are for the good Government of the State, as in the case of the Sovereign; or for the good Government of a town, as in the case of a Mayor and Commonalty.

The *Eleemosynary* are Corporations consisting of Members who are incorporated for charitable purposes, such as those for the care and management of Hospitals, or the maintenance of the Poor.

These are the several species of Corporations. I will now explain to you how Corporations may be *created*; what are their *Powers, Rights, and Capacities*; how they may be *visited*, and how they may be *dissolved*.

1. HOW THEY MAY BE CREATED.

By Common Law, which I have already explained to you is immemorial custom, they may have been created; because the law supposes that a prior and legal permission had originally been granted. Many Corporations, by immemorial usage, have no original Charter to prove their rights; by which length of usage it is presumed that they formerly were erected into Corporations by proper authority. This is called a Right by Prescription.

All these methods of creating Corporations, by Common Law, Prescription, or by Act of Parliament, are reducible to the Queen's letters patent, or Charter of Incorporation. When created they must have a name, and by that name alone they exercise all legal Acts.

2. WHAT ARE THEIR POWERS, RIGHTS, AND CAPACITIES.

These are to have perpetual succession, which is the very object and use of a Corporation—To grant and receive by their corporate name—To purchase lands, and hold them for the benefit of themselves and successors.

An aggregate Corporation, consisting of many persons, has of course many peculiarities attached to it, which do not belong to an individual. It cannot commit a crime, or perform any duty

specifically attaching to an individual person. But its general duties are those, for which it was created by its founder.

In case of any injustice committed by a Corporation, it is liable to be sued in all Courts of Justice in the name of any one of its Registered Officers.

3. HOW VISITED.

Corporations being composed of individuals subject to human frailties, are liable, as well as persons, to deviate from the end of their institution. In Ecclesiastical Corporations, the Ordinary is the Visitor, and the Sovereign being therefore the Head of the Church, as Supreme Ordinary, is the Visitor of all of them. In Lay Corporations, the Founder and his Heirs and Assigns, are the Visitors. And as the Sovereign, in the legal sense, is the Founder of all Civil Corporations, inasmuch as it is she who grants letters patent for incorporating them, she is the Visitor; and the Court of Queen's Bench is the place where she exercises her jurisdiction. There, all disputes are to be decided, and all misbehaviour inquired into, and redressed.

4. HOW THEY MAY BE DISSOLVED.

The individuals who compose a Corporation may lose their place in it, by acting contrary to the laws of the Society, or to those of the land, or they

may resign. But the Corporation itself can only be dissolved, by Act of Parliament—by the death of all the Members—by surrender of its Franchises to the Sovereign—or by forfeiture of its Charter through negligence or abuse of its franchises ; in which case, the law judges that the body corporate has broken the condition on which it was incorporated, and, therefore, the incorporation is void.

I have thus detailed to you, in as easy and summary method as I could, every thing necessary for you to know concerning the Rights of Persons. The next and three following letters will be on the *Rights of Things* ; a far more intricate and uninteresting subject for you to enter upon. But as there is a great deal of that particular branch of the laws, necessary to be known by those persons only, who pursue the Study of the Law as a Profession, I shall explain to you so much only of them, as will give you a general insight into the matter, without burdening your mind or fatiguing it with difficult and complicated details, and after having detained you with those distinctions of Property, which I consider sufficient for your acquaintance, I shall proceed to the remaining part of my subject.

Yours, &c.

LETTER XIV.

RIGHTS OF THINGS.

OF PROPERTY IN GENERAL.

THE Rights of Persons were the subject of our inquiry in my former Letters; they are such rights and duties as are annexed to the persons of Men. The Rights of Things are now to be the object of our investigation. They comprise such rights as a man may acquire to external things unconnected with his person. They are called the Rights of Property, which every one, more or less, is desirous of acquiring for his own enjoyment, and for the advantage of his posterity.

The Earth, and everything therein, are the general property of mankind, given to him by the Great Creator of all things for his use and enjoyment. And while the Earth continued thinly peopled, it may be presumed, that all things were in common, and that each person took to his own use, such things as his immediate necessities required.

This *Use* gave a transient property to the person

using it, so long as he used it, and no longer; and thus the *Right* of Possession continued for the same time only, as the *Act* of Possession lasted. Thus the ground was in common: but whoever was in the occupation of any determined spot in it for rest, shade, or shelter, acquired a temporary ownership, from which it would have been unjust to have driven him; but which ceased, as soon as he voluntarily quitted it. Thus also a tree might have been in common, but whoever gathered the fruit, acquired the sole property of the fruit, so gathered for his own use and sustenance.

But when mankind increased in numbers, craft, and ambition; it became necessary not only that the *use* of Property for the time being, but that the Property *itself*, should be exclusively appropriated to the person using it; otherwise endless contention and violence must have inevitably ensued, and the right of the strongest would have become the only right acknowledged. Besides, as the ingenuity of man supplied himself with various conveniences and comforts; and as he found it necessary to provide habitations for shelter, and clothes for covering, the productions of his labour became identified with himself, and no person could have so full a claim upon the property, which he had in a manner created, as he himself.

By this means he became solely entitled to the property which he had either acquired or appro-

priated, and no person could have a right to it without his consent and compliance.

The Right of Property, therefore, in such things as were the natural productions of the earth, and in such things as were the productions of his own ingenuity and labour, became soon acknowledged and established in the individual possessing them ; and every man was allowed to follow his own inclination and taste, in acquiring possessions, so that they did not interfere with the acquired rights of others.

Some, however, who were not contented with the spontaneous productions of the Earth, sought a more solid refreshment in the flesh of animals, which they obtained by hunting. But from the frequent disappointments attendant on such a precarious subsistence, they sought animals of a more tame and docile nature, and collected them into flocks and herds. At first the owners of flocks and herds changed their pasture, as food and water were supplied or withheld ; and as the earth was in common, this migration from one part of a country to another, according to the seasons and the convenience of pasturing, could not encroach upon the rights of any individual in particular. But as men multiplied, it became daily more difficult to find out new spots to occupy, without encroaching upon previous occupants ; and thus, by constantly occupying the same ground, the constant

use of Property was the same thing as a constant *right* to it; the *right* of Possession, as I have before observed, remaining so long as the *Act*. But this constant occupation having consumed the fruits of the earth, and its spontaneous produce having been thus destroyed, it became necessary to pursue some regular method of providing a constant substance for support, and it was this necessity which gave birth to agriculture.

Property in Land, and in its productions, being thus acquired by the first taker, it remained in him, till he did some act to shew that he abandoned it; and when he did abandon it, it became the property of the next occupant. This might be attended with little inconvenience in the infancy of civil society, but could not exist in the complicated interests and artificial refinements of established governments. What might be useless to one man, might be useful to another; and, therefore, instead of abandoning property entirely, it was soon found, that by exchange, grant, or conveyance, each man might part with such property as he did not want, for such as he coveted or required. Thus, mutual convenience introduced commercial traffic, and the reciprocal transfer of property from one person to another.

The most universal way of abandoning property is by the death of the occupant. All property must cease upon death, considering men simply as individuals; but considering them as connected

with civil Society, such an abandonment would be productive of endless disturbances, and, therefore, the universal law of every nation has permitted the individual to bequeath his property to whom he pleases; or, in default of such bequest, has directed on whom such property shall devolve, according to the municipal law of the country, of which such individual shall have been a member. And where no bequest has been made, and there is no person whom the law has appointed heir to such Property, then it devolves to the Sovereign.

Wills, therefore, and the Rights of Inheritance, are the two channels through which property descends on the death of the occupant. Every country has different ceremonies, forms, and laws, to regulate the manner of the descent, and the persons to whom the property shall descend. Neither does any thing vary more than the rights of Inheritance under different national establishments. What the nature of this property is, and how it is transferred from one person to another, will be the subject of the following Letters.

Yours, &c.

LETTER XV.

RIGHTS OF THINGS.

THE SEVERAL SORTS OR KINDS OF THINGS REAL, AND
THE TENURES BY WHICH THEY MAY BE HELD.

THE Property in *Things*, as contra-distinguished from *Persons*, is of two kinds: that in *Things Real*, and that in *Things Personal*. *Things Real* are such as are permanent and irremoveable, as Lands and Tenements. *Things Personal* are such as are transitory and moveable, as Money, Goods, and the like, which may attend the owner's person, wherever he chooses to go.

1. THE SEVERAL SORTS OR KINDS OF THINGS
REAL.

Things Real are of two sorts, *Corporeal* and *Incorporeal*. *Things corporeal*, are Lands, Tenements, and Hereditaments (which last word signifies any thing that may be inherited), and *Things incorporeal* are in the nature of Rights emanating and derived from the land: they are therefore not

the object of the touch, and cannot be seen nor handled, yet are as much Real Property, as the land itself from which they are derived.

1. *Things Corporeal*, or Land, include every thing on the land, over the land, and under it. So that, where a man grants all his lands to another, he grants all his Woods, Mines, Waters, and Houses, as well as his Fields and Meadows. And as such grant of land comprehends every thing above it, he may erect what buildings he pleases, as high as he pleases, so that such buildings do not project over the land of his neighbours. For as his neighbours have equal rights with himself, such projection would be an encroachment on those rights.

Things Incorporeal, or Rights, emanate from things corporate either real or personal; it is not the things themselves, whether they be Lands, Houses, or Jewels, which constitute the property in the Possessor of the Incorporeal Right; but some Right or Advantage collateral to them, as for instance, a Rent issuing out of the land, or an office relating to those Jewels.

2. *Things Incorporeal* consist of ten sorts.

1. *Advowsons*, or the Right of Presentation to a Living: it is not the Possession of the Church and its appendages, for these belong to the Minister; but it is the right of nominating such minister, and giving him a title to such bodily

possession, which constitutes the incorporeal property in the Patron.

2. *Tithes* are paid for every thing yielding an annual increase, but not for any thing which is of the substance of the earth—as stone or lime. The Tithes of each parish are allotted to its particular minister, and are due of common right, unless there be a special exemption.

By 6 & 7 William 4, ch. 7, passed in A. D. 1836, Tithes have been commuted into a rent-charge, issuing out of the lands in each parish.

3. *Common, or Right of Common*, which is the power of exercising a right or privilege over the land of another, and is supposed to have arisen at first from some contract between the Lords of Manors and the inhabitants, by which the Lord gave up a piece of soil for their common use. Common is of various kinds: Common of Piscary, or a right to fish in another man's waters. Common of estover, from *estoffer*, to furnish, called formerly *Bote*, from a Saxon word, signifying satisfaction, (*i. e.* a compensation for services), being a right to cut firewood in the wood or copse of another; Common of Turbary, or a right to cut turf on another person's land: and Common of Pasture, which is the most ordinary acceptance of the word. This is the right to put a certain number of beasts upon those waste lands, which, though formerly belonging to the Lords of Manors, now form a species of public

property, till by enclosure under an Act of Parliament, they again partly become the property of the Lord, and partly of other proprietors of adjoining lands.

4. *Ways*, otherwise called *Easements*, being the right of going over another man's ground, or the right to have the use of a watercourse thereon.

This may be grounded on special permission, given to one particular person; or may belong by prescription generally to the inhabitants of a particular parish.

5. *Offices*. In these a man may have an estate, either for life, for a term of years, or during pleasure.

6. *Dignities*, of which we have already spoken, signifying titles of Honour and Reputation, and for the most part descendible as of right, to the eldest son.

7. *Franchises*. These are Royal privileges in the hands of a subject. Such as to have a Manor or Lordship, to have a fair or market, with the right of taking toll; to have a Free Fishery, which is the exclusive right to fish in a public river.

8. *Corodies*, are a Right of Sustenance, or to receive certain allotments of victuals and provisions. They were formerly due to the Sovereign, from abbeys and other religious houses, in respect of their having been founded either by himself or some of his ancestors. They are now charged on the owners of these properties in respect of their inheritance, and in lieu of them, a pension, or sum of money, is sometimes substituted.

9. *Annuities.* These differ from rent-charges, which are things real, inasmuch as a rent-charge is imposed on, and issues out of land; whereas an annuity is a yearly sum chargeable only on the person who grants it, and terminating with the life either of the grantor or grantee.

10. *Rents* are certain profits issuing out of lands and tenements corporeal, and cannot be charged on an incorporeal property, as out of Advowsons, Commons, Offices, or Franchises. They are payable on the land, from which they issue, except in the case of the Sovereign, when payment must be made in her Exchequer, or to her Receiver in the country.

2. THE TENURE BY WHICH THINGS REAL MAY
BE HOLDEN.

There is no doubt, but that in the time of our Saxon ancestors, all the lands in the kingdom were held by their several possessors, free from all incumbrances, and subject to no fines nor impositions. Neither were any rents or services paid or due out of them to any person whatever. But on the Norman Conquest, the Feudal system, which had for some time been established in Europe, was introduced by King William, as a necessary consequence of those grants of forfeited lands, which he made to his Norman followers, and we find that it was not long, before the English nation, it may be reluctantly—yet by public consent—

adopted and recognised this system. The principle of it was entirely of a military nature, and presumed, that all lands whatever were held of the King as Superior Lord, and were granted by him to inferior persons, subject to certain services and returns. These again granted portions of such land to persons under them, called *feuds*, or *fees*, and signifying, in the Northern language, a conditional stipend or reward. The principle of the condition which accompanied these fees, was mutual defence; and as each party in a progressive gradation from the original grantor of the fees, to the last person benefited by them, was linked together by the mutual obligation of Protection and Defence, nothing could be more admirably adapted for the strength of the whole, than this military system of Feudatories.

Our ancestors who held their lands originally subject to no Superior Lord, and consequently subject to none of the impositions and hardships of the Feudal system, consented to this tenure from the Crown as the basis of a Military Discipline; but when the grievances resulting from it, became intolerable, they sought, by force of arms, to obtain redress, and a restoration of their former independence; this produced Magna Charta from King John, justly considered the foundation of our Liberties.

The fundamental maxim of the Feudal tenure, was, that all lands being originally granted by

the Sovereign, were therefore held mediately, or immediately from the Crown. The grantor was called the Proprietor or Lord, and he, to whom the land was granted, Feudatory, or Vassal. The vassal took an oath of fealty, or profession of faith, to the Lord; and upon being invested with the grant did homage for the lands. The service, which he was bound to render to his Lord in recompence for the land he held, was two-fold: to attend his Courts in time of Peace, and attend his person in time of War.

Fends or Fees, on their first introduction, were granted to the vassal at the will of the Lord, who might resume them when he pleased. They were afterwards granted for a term of years; then for life; then to the vassal and his sons; and lastly to him and his heirs, by which they descended to all his male descendants.

These were the simple and principal qualities of the genuine and original Feuds, all of a military character, and in the hands of a military person. But as soon as they came to be considered in the light of a civil establishment, their simplicity was destroyed, and most refined and oppressive consequences were drawn from them. These vary in different countries; and I will now point out to you, in what manner they have affected the Landed Property in England.

All Real Property being held, or supposed to be held of the Crown, and under it, of inferior

Lords, in consideration of certain services to be rendered by the tenant, those who held immediately under the Sovereign, were called Tenants in Chief, and the same distinction ran through all the different sorts of tenures.

There are four principal Tenures, all of which subsisted till the middle of the seventeenth century, and three of which exist at this day:—1. *Knight Service*; 2. *Socage*; 3. *Common Copyholds*; and 4. *Base Copyholds*.

1. KNIGHT SERVICE.

To make a tenure by Knight Service, land consisting of twelve hundred acres, called a Knight's Fee, was granted by the Sovereign; and the return or rent, which the grantee of the land paid to his Lord, was forty days' attendance annually during the time of War. Knight Service also included other consequences; such as

Aids, which were in the nature of pecuniary grants, to ransom the Lord, if taken prisoner, to defray the expenses of making his eldest son a Knight, and to provide a portion for his daughter.

Reliefs. These were Fines upon the death of the actual possessor of the land; and though when the Fees were made hereditary, Reliefs ought necessarily to have ceased to exist, yet the Lords continued to exact arbitrary fines, until in the 27th year of Henry II., one hundred shillings was fixed as the composition for every Knight's fee.

Primer Seisin. This was a right which the King had to one year's rent for those lands which were held of him in chief, if the heir was of age.

Wardship. But if the heir was under age, then the Lord had the wardship of the heir, and was entitled to hold the lands without accounting for the profits.

Marriage. If the heir was under age, the Lord had also the power of offering to him or her a suitable match; which, if refused, gave him the value of the marriage portion.

Fines. These were sums of money, paid to the Lord, whenever the tenant had occasion to make over his land to another.

Escheats. This took place when the tenant died without heirs, or was attainted of felony or treason, in which case the land reverted to the original grantor. Escheat is derived from the French verb *Escheoir*, to fall, and means an accidental obstruction of the course of descent, and consequently an unforeseen determination of the tenancy.

There were other species of Knight Service, called Grand Serjeantry; where the tenant was bound to perform some personal service, as to carry the sword of the Sovereign, to be his champion, or to carry his banner. These services, as well as those appertaining to the ordinary Knight Service, being personal, a personal attendance was necessary, and this becoming inconvenient and troublesome, the tenants found means of compounding

for it, either by sending others in their place, or by making a pecuniary satisfaction. These pecuniary assessments soon became arbitrary, and the whole nation groaned under the hardships of this Feudal Constitution. Palliatives were from time to time applied, till at last by 12th Charles II. all the incidents to Knight Service were entirely abolished, and all kinds of tenures, whether held of the King or others, were turned into free and common socage; excepting tenures in Free Alms, Copyholds, and the Honorary Services of Grand Serjeantry.

2. SOCAGE,

Is a Tenure by any certain and determinate service, and includes all other methods of holding free lands by certain invariable rents and duties. As the holding of lands formerly of the King by rendering him annually a bow, or a sword. The word is derived from the Saxon, *Soc*, power or privilege. The number of socage tenures after the Conquest was inconsiderable; till by successive charters of enfranchisement granted to the tenants, their number and value began to increase, so as to form a distinct part of our English system of tenures.

3. COMMON COPYHOLDS.

A Manor was a district of ground held by Lords and great personages; who after taking what quantity of ground they pleased for their own

use, distributed the rest among their tenants. This land the tenants held under no assurance in writing, but at the pleasure of the Lord. The remainder was uncultivated, and was termed the Lord's waste. These tenants were called villeins, and were little better than slaves. In process of time, however, they having enjoyed their estates without interruption in a regular descent, became as much entitled to their possessions, as the Lords themselves, in spite of their Lord's will. They had, nevertheless, no title to shew for their estates, but *the will of the Lord* according to the custom of the Manor. This form of custom committed to writing, together with the admission of each tenant in pursuance of it, was entered in the several Rolls of the Courts of the Manor; and hence they were called tenants *by copy of Court Roll*, and their tenure a *Copyhold*.

To constitute a Copyhold, therefore, it is necessary that the lands be parcel of that Manor under which they are held; and that they have been demised *by copy of Court Roll* immemorially. There are various incidents to a Copyhold tenure, in the nature of pecuniary payments to the Lord of the Manor on the transfer of the Copyhold, by death or sale.

4. BASE COPYHOLDS.

These differ from common Copyholds, principally in the privilege of the services annexed to

them being certain, and not being held at the will of the Lord ; the *tenure* is absolutely Copyhold, but the *interest* which the tenant has in it, is equivalent to a freehold. Base Copyholders differ, however, from freeholders in this, that they cannot convey their lands by the general common law conveyances, but must pass them by surrender to the Lord, or his steward, in the manner of common Copyholds.

Whatever may have been the changes and alterations which the foregoing tenures have undergone from the Saxon era to the 12th of Charles II. before mentioned ; all tenures are now in effect reduced to two species ; *free* Tenures in Common Socage, and *base* Tenures by Copy of Court Roll. A very beneficial Statute (4 & 5 Victoria, ch. 35), passed during the early part of the present reign ; the object of which was to facilitate voluntary enfranchisement by the Lords of Manors, to promote the commutation of Manorial Rights, and to lighten the burden of fines accruing due on each change of tenant.

The advantages derived from this act will be further confirmed and established by another Statute, passed during the last Session of Parliament, (15 & 16 Victoria, ch. 51), whereby it is provided that Copyhold Lands may be enfranchised at the requirement either of the landlord or tenant, under the superintendence and direction of

the Copyhold Commissioners. A valuer is to be appointed by each party, whose duties will be to assess the Manorial Rights and other incidents of the tenure ; while the expense attending the proceedings, is to be borne by the party requiring the enfranchisement. It is to be hoped that by these means the complicated and embarrassing species of tenure, called Copyhold, will ultimately be got rid of altogether.

FREE ALMS,

Is that description of tenure, whereby the members of a religious Corporation, aggregate or sole, hold lands of the donor to them and their successors for ever. All such donations are now out of use, as, since the time of Edward I none but the Sovereign can give lands to be holden by this tenure.

Yours, &c.

LETTER XVI.

RIGHTS OF THINGS.

1. THE ESTATES WHICH MAY BE HAD IN
THINGS REAL.
2. THE TITLE TO THINGS REAL.
AND
3. THE MANNER OF ACQUIRING AND LOSING
A TITLE TO THINGS REAL.

FIRST—THE ESTATES WHICH MAY BE HAD IN
THINGS REAL.

ESTATES are of two kinds, *Freehold*, and such as are *less than Freehold*.

1. A FREEHOLD *Estate of INHERITANCE* is divided into estates absolute, or Feesimple, and inheritances limited or Feetail.

A *Feesimple* is an estate which a man possesses to him and his heirs for ever; the disposition of his estate being thus left to him to bequeath it to what heirs he pleases. This is an estate in the highest

degree, the owner having the absolute and uncontrollable dominion over it.

A *Feetail* is an estate which a man possesses to him, and to particular heirs, namely his children, being deprived at the same time of the power of disposing it to whom he pleases; but the terms of the estate marking out who shall succeed to it. A man may make what persons he pleases his heirs; but he cannot make whom he pleases his children; and, therefore, he has not the absolute dominion over his estate, but it must descend in the manner in which the law has pointed out. As a *Feesimple* therefore is an estate to a man and his *heirs*, a *Feetail* is an estate to a man and the *heirs of his body*, or children, and is of two kinds: *Feetail general* where all the children inherit in turn, whether males or females; *Feetail special* where males only inherit.

When an estate is given to a man without its being specified in the conveyance or demise whether it is in fee or *feetail*, he takes only an estate for life.

2. A FREEHOLD *Estate* NOT OF INHERITANCE,

is an estate for life only, and is either expressly created by deed or grant; or is created in law. As where a man has an estate tail given to him and his children born of a certain woman as his wife; and his wife dies without children, he is considered tenant for life. Also a man may be tenant for life

by the *curtesy of England*; which takes place when a man marries a woman who possesses an estate in feftail or feesimple, and having a child, that child dies; in this case, the husband, after the death of his wife, enjoys an estate for life. A wife also may be tenant for life, of such part of her husband's estate as the law apportions by way of dower. But a dower is now generally prevented, by a jointure being settled on the marriage in lieu of dower.

AN ESTATE LESS THAN FREEHOLD may be either an estate for years, at will, or by sufferance.

An Estate for Years, though for one thousand years, is a less estate in law than an estate for life; for this reason: that in one case the termination of the estate is certain and fixed; in the other uncertain and without any known limit: in the one case it is contracted and circumscribed by the will of man; in the other it is uncontrollable, and totally out of his power to fix the termination of it. Every estate, therefore, which must expire at a certain period, is an estate less than freehold.

An Estate at Will is an estate let by one man to another from year to year, determinable by either party at their pleasure; but not in the middle of any year without special agreement.

An Estate by Sufferance is similar to an estate at will; being where an estate is let to a man for any given time, and on the expiration of that time, he still continues tenant without any renewal of his

lease. The same process is necessary to resume the estate, as in a tenancy at will, or from year to year.

An Estate on Condition is an estate which depends upon the happening or not happening of some certain event, whereby the estate must be created, enlarged, or defeated. As where a grant is made to a man of an office; though no condition is named, yet the law implies that he receives it on condition of executing the office; or where an estate is given on a condition expressed, as that he shall take the donor's name, if he does not perform the condition, the gift is void.

An Estate on Pledge is where a man borrows a sum of money, and grants his estate and the rents and profits of it, till the debt is paid. This was anciently called a living pledge or gage, because the borrower's interest in the estate still continued alive; the mode has now fallen into disuse. But where a man borrows a sum of money, and conveys the estate as security for the debt and interest, it is called a mortgage, or dead pledge; because the legal interest of the owner is thereby absolutely conveyed away from him: the borrower, however, still continues to receive the rents and profits, as long as he pays the interest of the debt: when the debt is paid, the estate is re-conveyed to him.

Having thus pointed out the different species of estates with regard to the *quantity of interest*, which their owners have therein, I will now consider

them in another point of view, with regard *to the time of their enjoyment.*

An Estate in Possession requires little observation, as it comprises all those qualities which I have already enumerated.

An Estate in Expectancy may be either a *Remainder* or a *Reversion*. An estate in *remainder* is where an estate is given to A. for his life, or for a term of years, and after he has enjoyed it for the time it was granted, then it is to go to B. The first estate is an estate in possession, as respects A., and the second estate is in remainder, as respects B. An estate in *reversion* is where an estate is granted to A. for life, remainder to B. in fee-tail. If B. has no children, the estate reverts to the original possessor without any words expressive of it.

An estate also may be held in four different ways.

In Severalty, where one man is the sole tenant of it.

In Jointenancy, where an estate is granted to two or more, who are all equally tenants of every part, and on the death of any one, his share devolves to the survivors.

In Coparcenary, where an estate descends to two or more persons, and may be parted between them. Coparceners are in some respects like joint tenants, inasmuch as in either case there is a unity of title, interest, and possession. Hence, when by

a partition of the lands there is no longer unity of possession, or when by alienation of part by one parcener, there is no longer unity of *title*, the estate in *Coparcenary* is dissolved: or where the estate becomes vested in one person, it ceases to be an estate in *Coparcenary*, and becomes an estate in *Severalty*.

In Common, where an estate is granted to two or more persons, each holding by unity of possession, but not by unity of title; for the share of any one who dies, descends to his heir.

SECONDLY,—THE TITLE TO THINGS REAL.

Mere Possession, or actual occupancy, is the lowest and most imperfect title. This may be good or bad. If the latter, the occupant must be ejected by process of law; but if good, then the next step to a good and perfect title is,

Right of Possession, which may reside in one man, while the actual possession is in another. If such person puts in his claim within the proper time, and pursues those steps which the law points out, he may recover the possession of the estate; but if through negligence or some other cause, he has omitted to take those necessary steps within the time prescribed, then the party kept out of possession, may have nothing left in him but the mere *Right of Property*, without either actual possession or the right of possession. In possession, right of possession, and right of property, consists a

Complete Title to lands, tenements, and hereditaments.

THIRDLY,—THE MANNER OF ACQUIRING AND LOSING
A TITLE TO THINGS REAL.

There are only two ways by which Estates may be acquired; 1. by *Descent* or Inheritance, where the estate is vested in a person by the single operation of law; and 2. by *Purchase*, where the title is vested in a person by his own act or agreement. Purchase is used in contradistinction to Descent, and does not mean the buying of an estate, as it would do in common speech, but solely implies the *Acquisition* of it by any means, except by inheritance.

ESTATES BY DESCENT.

There are several rules or canons of Inheritance, which I shall briefly enumerate, without entering into their origin and progress, or the reasons on which they are founded. They form by far the most intricate and important part of the laws of property, but come not within the scope or province of these Letters, as an object of your attention.

Inheritances must *lineally descend*, but can never *lineally ascend*. Thus, a son succeeds to his father, but a father does not succeed to his son.

The males are admitted before the females. Thus each son succeeds to his brother before any of the daughters, though the daughters are the eldest.

Where there are two or more males in equal degree, the *eldest* only shall inherit, but the females altogether.

The lineal descendants shall represent the ancestor, or first person in possession: that is, a child, grandchild, and great grandchild, shall succeed before the younger sons of the ancestor.

On failure of lineal descendants, the inheritance shall descend to collateral relations, they being of the blood of the first ancestor.

The collateral heir of the person last in possession of the inheritance must be his next collateral kinsman of the whole blood; that is, the inheritance must descend to the issue of the nearest couple of ancestors that have left descendants behind them.

In collateral inheritances the male stocks must be preferred to the female: that is, kindred derived from the blood of the male ancestors, however remote, shall be entitled before those of the blood of the female; unless where the lands have descended from the female.

ESTATES BY PURCHASE.

There are five methods of acquiring a title to an estate by purchase, as contradistinguished from that by descent.

1. *By Escheat.* I have already explained to you that an escheat takes place where there is an obstruction in the course of descent, by some unfore-

seen contingency, and in consequence, the land reverts back to the original grantor, or Lord of the Fee. This may take place where the tenant dies without any relations whatever: where the child is illegitimate, or born before marriage; where the relations are aliens; and lastly, upon an attainder for treason or felony.

2. *By Occupancy.* This can never happen at the present day, as every thing now has an owner. This estate is confined by our law to one instance only. Where A. has an estate for the life of B.; if A. dies before B., the heirs of A. may hold it during the remainder of B.'s life.

3. *By Prescription*, where a man can shew no other title to what he claims but that he, or those under whom he claims, have been immemorially accustomed to enjoy it.

4. *By Forfeiture.* Lands may be forfeited in various ways and by various means:—By crimes, such as by treason and felony; by alienation contrary to law; by non-presentation to a benefice, when the right lapses to the Bishop; by simony, or selling the presentation for money, in which case the next presentation is vested in the Crown; by non-performance of conditions; by waste, which is the destruction, by a tenant for life, of that property which is to descend to the next heir; by breach of copyhold customs, if the estate is copyhold; and by bankruptcy.

5. *By Alienation.* This is the most common and

universal method of acquiring a title to property, and includes any instrument or means by which land is voluntarily assigned by one man, and accepted by another; whether by gift, sale, marriage, will, or other transmission of property, with the mutual consent of the parties. Those persons only can alienate property, who have the complete title and absolute control over the estate, and are capable by law, of executing a conveyance. There are various ways of alienating—by deed, signed, sealed, and delivered by the parties; by conveyance and enrolment under the 3 & 4 William 4, ch. 74, commonly called the Act to abolish Fines and Recoveries, the cumbrous and intricate legal process by which entails were formerly barred, and for which a much more simple, expeditious, and economical mode of effecting the same object, *viz.* to give the tenant an absolute power over the estate, has been substituted; and lastly, by special custom, as in the case of Copyholds, and by demise or last will.

Yours, &c.

LETTER XVII.

RIGHTS OF THINGS.

OF THINGS PERSONAL.

I HAVE already explained to you that things *personal*, as contradistinguished from things *real*, mean every thing moveable, and such as may attend a man's person wherever he goes. But as things personal sometimes issue out of and are annexed to real estates, they are divided into *Chattels real* and *Chattels personal*.

1. *Chattels real* have one quality of real estates, *viz.*, immobility, but want the other requisite, *viz.*, an indeterminate duration, and it is this deficiency which constitutes them things personal. Thus, a lease of real property for a term of years is a chattel real, as it must determine at a given time; the next presentation to a living also is a chattel real, as the right of presenting is gone the moment it has been exercised.

2. *Chattels personal* are, properly speaking, things moveable, as animals, furniture, money, corn, &c. But the property may sometimes be

not in *possession* but in *action*; that is, there may be a *right* to possess, or to acquire possession, without the *occupation* or enjoyment. Thus, money due upon a bond, or a recompense for damages sustained by the unlawful conduct of another, or for the failure of any express contract, is a chattel personal *in action*. In these cases, though the right is vested, yet there is no possession till it is recovered by law.

The *Title* to things personal, and the various ways of acquiring or losing it, are principally the following:—

By Occupancy; for though this is the original and primitive method of acquiring property, and has been restrained by the positive laws of society, yet in some few instances it may still give a title to property: as in the case of moveables found upon the earth or sea and unclaimed by any owner; the benefit of light, air, and water, used so as not to encroach on the previous occupancy of another; the possession of wild animals when killed or taken; the case where a man's property, such as cloth, timber, or silver, has been taken from him and converted into garments or utensils,—this additional improvement he has a right to possess; also where the goods have been mixed, so that the several portions cannot be distinguished; lastly, the copyright of a man's literary compositions, which the law has given him for a certain number of years.

By the Prerogative of the Sovereign; as in the case of all tributes, taxes, and customs; in these the Sovereign acquires a property, and the subject loses it, the instant they become due.

By Forfeiture; where the title to chattels is lost by conviction of high treason, felony, &c.

By Custom; where fines and pecuniary or other payments in copyhold tenures, are due to the Lord of the Manor on the decease of the owner of the land.

By Succession. The right of succession to chattels is universally inherent by the common law in all aggregate corporations; and in those single corporations which represent a number of persons, as in the case of a master of an hospital, who is a corporation for the benefit of the poor brethren; in corporations *sole* no such right exists generally, although it does by special custom in some particular instances. In the case of the Sovereign, it does so always.

By Marriage. All the personal property, or chattels personal in possession of the wife, vest immediately on her marriage in her husband; but if such property consist of chattels real, then only for a time, as in the case of a lease; on the other hand, chattels personal in action, as debts due to her, the husband must convert into possession, to enable him to enjoy them. In one particular instance, a wife may acquire such a property in her husband's goods as shall remain to her after

his death. These consist of her necessary apparel, jewels, and other ornaments suitable to her station, and are called her paraphernalia, a term derived from two Greek word, which literally means "*Beyond her dower.*" A husband may indeed dispose of them during his life, but if she continues to use them till his death they become her property.

By a Judgment; in consequence of some suit or action at law, whereby the right and property of chattel interests have been decided to be vested in the prevailing party. This judgment may either have been for the possession of property unlawfully detained; or for a penalty conferred by the law on him who gives information of a breach of the law in another; or for damages acquired as a recompence for any injury sustained.

By Gift or Grant. A Gift is always gratuitous; a Grant is always for a consideration: and these are transfers of property from one man to another, either by writing or word of mouth. They take place immediately on being executed; but if not executed, they are in the nature of contracts. A gift of personal chattels is void unless accompanied by actual delivery of possession.

By Contract; which is an agreement upon sufficient consideration to do some particular thing. This agreement must be mutual, and is either expressed or implied. If expressed, the terms of it are openly known and avowed; if implied, they are

such as reason or justice dictates, as that a workman shall be paid for his work. A contract must also be on sufficient consideration; that is, there must be something given in exchange. It must also be to do, or not to do, some particular thing.

By Sale or Exchange. If the transaction be a commutation of goods, it is more properly an exchange; but if it be a transfer of goods for money, it is a sale. Goods bought are not the property of the buyer till paid for, either wholly or in part, if the latter, the payment is called an Earnest, and binds the bargain; or till the money has been offered and refused; or till credit is allowed;—they are then the property of the buyer, and the money becomes a debt. Many intricate questions constantly arise as to the exact point of time when the property of goods sold passes from the vendor to the purchaser.

By Bailment; which is derived from the French verb *bailler*, to deliver, and signifies goods delivered upon trust, as cloth to a tailor to be made into a garment, or goods to a carrier to be conveyed to a certain place. In the one case the law implies a contract on the part of the tailor to render the cloth again when the garment is made; in the other, a contract on the part of the carrier to convey and deliver the goods according to their destination. In these and many other instances, there is a special qualified property in the tailor and the carrier, and

they, as well as the owner of the cloth and goods, may proceed against any one who steals or damages them.

By Hiring or Borrowing. These are qualified contracts on the part of the hirer and borrower; the premium for the use of the thing hired, or for the money borrowed, depending in a great measure on the risk run by the person who lets or lends. Where money is borrowed, interest at so much per cent. per annum, according to the agreement between the parties (except in certain cases where the rate is fixed by Law) is payable by the borrower: and from this subject have arisen policies of Insurance, which are in the nature of wagers, wherein a person undertakes to make good a loss, if a certain sum according to the estimated risk is paid. From this also have sprung annuities upon lives, which are speculative transactions, whereby one man pays a sum of money to receive a yearly return, so long as he himself, or those for whose lives the annuity is granted, shall live.

By Debt, which is any contract whereby a determinate sum of money becomes due and is not paid, but remains in action merely. This may be a debt of record, due by judgment of a Court of law; or by special contract due by deed or instrument under seal; or by simple contract due in the common and daily occurrence of bargain and sale. There is also another species of simple contracts

called Bills of Exchange or Promissory Notes. A Bill of Exchange was originally invented for the more easy remittance of money from one part of the world to another; and it is an open letter of request, desiring one man will pay a sum of money to another person on his account, and making himself, either at sight, or at a fixed period of time distant, responsible for the payment of it. This Bill is negotiable in the market, and the person who accepts the Bill is liable, in the event of its being dishonoured, no less than the drawer of it. Those through whose hands it passes, while in circulation, endorse it, and can also be sued upon it by others into whose hands it passes. The subject of Bills of Exchange in our commercial country gives rise to more suits at law than any other mercantile instrument.

Next of importance to the Bill of Exchange is the Promissory Note, which is an engagement in writing to pay a sum therein specified in a time limited to a person therein named, or sometimes to his order. This property may be transferred from one man to another, and is contrary to the general rule of law, that no property in action is transferable. This assignment is the life of Paper Credit.

A Cheque or Draft is a written order addressed to some person, generally a Banker, although this is not essential, directing him to pay a certain sum of money to the person named there-

in, or bearer on demand. Cheques are always payable to the bearer, and consequently are assignable by *delivery*, whereas Bills of Exchange are assignable *only by Endorsement*. In consequence of their daily use, they have been exempted from the Stamp Duties, except in cases where the Banker or other person on whom they are drawn, resides ten miles or upwards from the place whence they bear date. In the latter event they are liable to the same Stamp Duty, as Bills of Exchange of the same amount. Cheques are payable instantly on presentment; whereas Bills of Exchange have certain days allowed after they become due, before payment can be legally enforced. These are called the days of grace.

By Bankruptcy. No man can be a Bankrupt but a trader; and he must secrete himself, or do some act tending to defraud his Creditors in order to commit an act of Bankruptcy: what all these acts are, it will not be necessary for me to enumerate; they are many and various; to avoid his creditors, and evade their just demands, are generally sufficient to declare a man a Bankrupt; whether it be by secreting himself, suffering himself to be arrested, or making a fraudulent conveyance of his property to another. I need not explain to you the steps to be taken preparatory to a man being declared a Bankrupt: I shall only add, that as soon as the directions of the law have been complied with, all the Bankrupt's pro-

erty is conveyed to assignees, who receive it for the benefit of his creditors, to be divided among them.

By Testament and Administration. The former is executed by the Testator, and may be made by any one with some few exceptions. The latter takes place when no will having been made, the next of kin takes out letters of administration, and distributes the property of the deceased according to the laws of succession. There are some persons who are prohibited by law from making a will; by reason of incapacity, as male infants under fourteen years of age, and female under twelve; lunatics, and persons under temporary derangement. A married woman may, in some instances, make a will, devising lands; but, excepting by her husband's consent, she is generally incapable of making a testament. Neither can criminals after conviction make a will, as their goods have been forfeited to the Sovereign. Testaments may be either written or verbal; but if the latter, they must be made at the point of death, before a sufficient number of witnesses, and reduced to writing afterwards. A codicil is a supplement to a will. A written will of lands as well as of personal property (1 Victoria, ch. 26) requires the presence of two witnesses, who must together attest the signature of the Testator, or of some one who has signed the will for him in his presence, and they must also attest that the will or codicil has been by his direction signed in their presence.

No will takes effect till the death of the Testator, and, therefore, if a man makes many wills, the last overthrows all the former. An Executor is necessary to a will, and is the person to whom the Testator commits the execution of the directions contained in the will. An Administrator is similar to an Executor, inasmuch as he does that according to the directions of the law, which an Executor does according to the directions of the Testator.

I have thus taken a transient view of a very extensive and diffuse subject, and one requiring much attention and great study thoroughly to understand. I am afraid that it has afforded you less pleasure and amusement in the pursuit, than what I have discussed in my former Letters. The study of this branch of our national jurisprudence is not a little perplexed and intricate. But I have endeavoured to select those parts of it, which may be useful for you to know, and in which the principles are the most simple, the reasons the most obvious, and the practice the least embarrassed. I have compressed in four Letters only, what has taken up nearly four hundred pages of the learned Commentaries; if you are dissatisfied with my brevity I must refer you to the original.

Yours, &c.

LETTER XVIII.

PRIVATE WRONGS.

OF THE REDRESS OF PRIVATE WRONGS, AND OF
COURTS OF JUSTICE IN GENERAL.

AT the commencement of these Letters, I defined Municipal Law to be, "a Rule of Civil Conduct, prescribed by the Supreme Power in a state, commanding what is right and prohibiting what is wrong." The primary objects of Law, therefore, are the establishment of *Rights* and the prohibition of *Wrongs*; and having already considered the Rights that were defined and established, I have now to consider the Wrongs that are forbidden and redressed by the laws of England.

Wrongs are of two sorts, Private and Public. The former are an infringement of the private or civil rights of individuals, and are called *Civil Injuries*. The latter are a breach and violation of those public rights which affect the whole community, and are called *Crimes* and *Misdemeanors*.

In order to redress these Civil Injuries, Courts of Justice have been established, wherein the aggrieved party may seek and obtain redress, according to the nature and extent of the injury sustained. But as there are some injuries which may be redressed by the mere *act of the parties*, or by the mere *act of the law*, without having recourse to Courts of Justice; I will first notice them, before I proceed to that branch of the subject, which will occupy the remainder of my correspondence on Private Wrongs. The first remedy which the law allows by

THE MERE ACT OF THE PARTIES—IS

Self Defence. I have already shewn to you that the defence of one's self, and of those who stand in the relation of husband and wife, of parent and child, or of master and servant, is consonant to the law of nature, and agreeable to those natural rights given to us by the Creator of all Things. But as this law of Nature cannot be taken away by the law of Society, still it must not exceed the bounds of defence and prevention, for then the defender would himself become an aggressor.

Reprisal or Recaption. This happens when a person is unlawfully deprived of his property, and finds it again. He then may lawfully claim and retake it, provided it is not attended with a breach of the peace, nor accompanied with force or terror.

Otherwise he must have recourse to an action at law.

Entry on lands and tenements. As Recaption is a remedy for an injury to *personal* property—so entry on lands and tenements is a remedy allowed when another has taken possession of *real* property. This must also be done without force or a breach of the peace.

Abatement or Removal of a Nuisance. Whatever unlawfully annoys or does damage to another is a nuisance, and such nuisance may be removed by the party aggrieved, so that no riot is committed in doing it. Of this nature is the removal of a fence placed across a public path or road; or of an obstruction, which deprives me of light through my windows.

Distrainting for Rent, or for Cattle damaging or trespassing upon another's land. In the former case it is a remedy given by law to landlords, to secure and pay themselves their rent when due and unpaid. It is in the nature of actual payment. The act of distraining is a redress obtained by the mere act of the parties; but what is to be distrained, and how the thing distrained is to be taken and disposed of, are regulated by law. In the latter case, a distress or seizure of cattle, trespassing and damaging the land, is in the nature of a security; either till the party trespassing satisfy the other for the damage done; or if he refuses so to do, then the

cattle or other thing distrained to be sold to make good the damage. The party whose cattle have trespassed, may also *replevy* the cattle distrained, that is, bail them out of the custody of the law, to abide the disputed damage and trespass, when ascertained in a Court of Justice. There are other causes for distraining; these are not the act of the parties, as individuals, but are in consequence of authority vested in them by law; as a distress for penalties forfeited, or for rates unpaid, all of which may be levied after certain legal forms have been complied with.

There is another remedy which comes under the description of those, allowed by the mere act of the parties, but which requires the consent of the aggrieved and of the aggressor. This is

Arbitration, which is where two or more parties agree to refer the matters in dispute to the award and decision of a third person. This award when made is binding; but if illegally and partially made, may be set aside by application to the Courts of Law.

THE MERE ACT OF LAW.

This only takes place in two cases. By *retainer*, when a Creditor is made an Executor, in which case the law gives him a right of retaining so much as will pay himself; and by *remitter*, when a person having the right of property, but not the right of possession, and having no right to enter without re-

covering possession in an action, has the freehold cast upon him by a subsequent, and of course a more defective title; in this case, he is *remit*ted or sent back, by operation of law, to his ancient and more certain title.

From the union of the above remedies, *viz.* the Act of the Parties, and the Act of the Law, springs the principal object of our next inquiry, the Redress of Injuries by Courts of Justice; wherein the act of the parties sets the law in motion, and the process of law is the instrument, by which the parties are enabled to procure a certain and adequate redress.

Although the law allows the parties a remedy in those cases in which they choose by their act to exert the right of redressing themselves; yet it does not exclude them also from the benefit of the ordinary course of justice; but gives them that right as an additional weapon, in particular instances, where the particular circumstances require a more expeditious proceeding. In all cases, it is an undisputable rule, that where there is a legal right, there is also a legal remedy, by suit or action at law, whenever that right is invaded; and it is in Courts of Justice, that such remedy is found.

COURTS OF JUSTICE,

Are places where justice is administered, and whether created by Act of Parliament, or letters

patent, or subsisting by prescription, are derived from the power of the Crown. In all Courts, the Sovereign is, in contemplation of law, always present; but as, in fact, that would be impossible, she is there represented by her Judges.

In all Courts there must be at least three constituent parts;—the *Plaintiff*, who sues, or demands satisfaction; the *Defendant*, who is sued or called upon to make satisfaction; and the *Judge* who is to examine the truth of the facts, and to determine the law upon them. There are also Attorneys, and Counsel or Advocates. An Attorney, is one who is put in the place or *turn* of the Plaintiff or Defendant, to manage his matters of law, and his office and duties are regulated and defined by law. A counsel is either a Barrister or Serjeant. The former is one, who, at a certain period after his admission into the Inns at Court, takes his degree of Barrister, or is, what is generally termed, called to the Bar. A Serjeant is a Barrister, who, after having been a certain number of years at the Bar, is supposed to have served his time, and is therefore called Serjeant at Law, *serviens ad legem*. The duties of both are to plead the cause of their clients, and to watch over their interests. All the Judges are Serjeants at Law, and must take that degree before they can be made Judges. Of these two description of advocates, Barristers, and Serjeants, are selected those whom the Queen appoints her counsel, and who are called Queen's Counsel

or Queen's Serjeants. They take precedence of other counsel, and are entitled to certain privileges annexed to their rank. The fees of counsel, like the fees of a physician, are all honorary, and are given as a mere gratuity, and not as hire; and although few counsel or physicians would attend where they are not paid, yet they cannot demand their fees already incurred, but can only refuse to attend in future. For this reason it is, that by the custom of the Profession, fees are generally paid, at the time that counsel are retained, or when the brief is delivered to them.

Yours, &c.

LETTER XIX.

PRIVATE WRONGS.

OF COURTS OF PUBLIC OR GENERAL,
AND OF
COURTS OF PRIVATE OR SPECIAL JURISDICTION.

THERE are two species of courts of justice now acknowledged in this kingdom. The one of a public and general, the other of a private and special jurisdiction.

Courts of a public or general jurisdiction are, the Courts of Common Law and Equity; Ecclesiastical Courts; the Courts Military; and Courts Maritime.

PUBLIC COURTS OF COMMON LAW AND EQUITY.

The lowest and most expeditious court of justice known to the law of England, is one, which is, at this day, nearly out of use, and, except in particular places, has ceased to exercise its authority. It is called *the Court of Piepoudre*, from the old

French words *pied puldreaux*, signifying a pedlar or chapman, or from *pes pulverizatus*, the dusty feet of the suitors therein, and is incident to every fair or market, wherein disputes are settled by the Steward of the Tolls of the Market, and all subjects connected with the commercial transactions, which take place in the market, are likewise determined by him.

A Court Baron is incident, as I have before shewn, to every manor or lordship, and is held by the steward of the manor; also

The Hundred Court, which is a larger Court Baron, and is held for the inhabitants of a particular hundred. This, like the Court Baron, has fallen into disuse, as a Court to hear and decide pleas between party and party.

The County Court was formerly confined to the jurisdiction of the Sheriff, and might hold pleas of debt or damage under 40*s.* But a late act has greatly extended the powers of this Court, and thereby greatly improved the administration of justice throughout the kingdom, by the establishment of Courts in certain districts, wherein small causes may be tried at intervals of no more than a month, before Judges appointed by the Crown, through its officer, the Lord Chancellor, and wherein the claims of parties may now be adjusted with economy and dispatch; whereas the great grievance of the Superior Courts has long been the difficulty of obtaining redress, through the extrav-

gance and tardiness of justice therein. The Judges in the county courts, who must have been Barristers of not less than seven years' standing, either adjudicate themselves upon the claims or plaints brought before them, or they refer the case, if it presents features of any difficulty, to the consideration of a jury of five men; and the cause is then tried as in the Superior Courts. By a late statute, the jurisdiction of the County Court is extended to actions for the sum of fifty pounds.

The Court of Common Pleas. In former times there was only one superior court of justice in the kingdom, consisting of all the great officers of State, assisted by certain persons learned in the law, called the King's Justices, and also by the greater Barons of Parliament. Over all, presided a special magistrate, called the Chief Justice of all England. He was the principal Minister of State, and the second man in the kingdom. This great court being bound to follow the King's household in all its expeditions and progresses, the trial of common causes became very burdensome to the subject, as he never knew in what place he could seek redress. It was, therefore, one of the articles of the Great Charter, that, "The Court of Common Pleas should not follow the King, but be held in some certain place." This certain place was Westminster Hall, where it usually had sat, when the King resided in the city; and the court being thus stationary, the Judge became so too, and a

Chief Justice, and three lesser or *puisné* Judges were appointed. The power of the Chief Justice being also greatly lessened by other provisions in the Great Charter, several of the offices which he formerly held, were subdivided into distinct courts of judicature. The Steward of the Household presided over a court to regulate the household, or King's domestic servants. The high Steward, with the Barons, formed a tribunal for the trial of peers, and assumed the appeal to themselves from the judgments of other courts. The distribution of common justice between man and man, was thrown into so prudent an order, that each court formed a check upon the other; the Court of Chancery issuing all original writs under the Great Seal to the other courts; the Common Pleas determining all causes between private subjects; the Exchequer managing the King's revenue; and the Court of King's Bench superintending all the rest by way of appeal, and having the sole cognizance of criminal causes, or pleas of the Crown. *The Court of Common Pleas* now consists of a Chief Justice and four other Judges.

The Court of Queen's Bench is the supreme court of common law, and consists of a Chief Justice, and four lesser or *puisné* judges. Its jurisdiction is very high and transcendent. It superintends all corporations, and the conduct of all magistrates. It protects the liberty of the subject by speedy and summary interposition, and takes cog-

nizance both of civil and criminal causes. It is a court of appeal from all the other courts of law; and from it there is an appeal to the House of Lords.

The Court of Exchequer is inferior to the two former courts in rank and power. It was formerly a court of law and equity also, but its jurisdiction in equity was by 5 Victoria, ch. 5, transferred to the Court of Chancery. It derives its name from a chequered cloth, formerly covering the table, on which, when certain of the King's accounts were made up, the sums were marked or scored with counters. It is divided into two parts; the receipt of the Exchequer, and the court or judicial part of it. As it was originally a court entirely for the recovery of the royal revenue, all persons who sought to recover in it for their own private purposes, must have pleaded and sued their debtors on the ground that, without the interposition of the court, they could not discharge their debts to the Sovereign. This fiction was abolished by 2 William 4, ch. 39; and every one may now bring a writ in this Court in the ordinary form.

The High Court of Chancery is the most important of any of the Queen's courts of justice, in all matters of civil property. The Chancellor is appointed solely by the delivery of the Great Seal by the Queen to the person chosen to fill that office. He is Speaker of the House of Lords by Prescription. He has the appointment of all justices of the peace; and from having been formerly an

ecclesiastic, he is keeper of the Queen's conscience. He is visitor of all hospitals and colleges of royal foundation. He is patron of all livings under a certain value in the Queen's books. He is the general guardian of all Infants and Lunatics, and has the general superintendence of all charitable uses in the kingdom. From the Court of Chancery there lies an appeal to the House of Lords.

The Court of Appeal in Chancery. This court is one of great dignity, authority, and honour: it was established by 14 & 15 Vict. ch. 83, sect. 3; and consists of the Lord Chancellor and two Lords Justices, two of whom form the Court. This Court has the same power and authority as the Court of Chancery, and the jurisdiction of one of the Vice Chancellors in matters of Bankruptcy for which he formerly held a Court of Appeal, is by this statute transferred to the Court of Appeal in Chancery. The Lords Justices take precedence immediately after the Lord Chief Baron of the Exchequer.

The Vice Chancellor's Courts. These are three in number, presided over by a single Judge, who has jurisdiction in matters of Equity. From his decision there lies an appeal to the Lord Chancellor, either sitting alone in his own court, or with the Lords Justices of Appeal.

The Vice Chancellors are all three of equal dignity, and have rank according to the prior date of their several appointments.

The Rolls Court. This is a Court of Equity presided over by a single Judge, the Master of the

Rolls, who, contrary to the general principle in the case of Judges, may also sit as a member of the House of Commons.

There are also the *Courts of Bankruptcy*, of which the Judges are the Chief Commissioner and five other Commissioners in the metropolis, and a single Judge in the country districts. Their duties are very important, inasmuch as they are employed in the investigation of those numberless transactions, which, in a commercial country, not only ruin the Bankrupt himself, but frequently overwhelm many other persons, through too great confidence, or a want of due and proper caution. From these courts an appeal lies to the Lords Justices sitting in Bankruptcy.

The Insolvent Debtors' Court,—where a man may, by a declaration of his total inability to meet his liabilities, emancipate himself from his creditors, without payment of his debts.

The Court of Exchequer Chamber consists of all the Judges, assembled from the other courts, to hear some causes of difficulty and weight argued before them, previously to judgment.

Court of Criminal Appeal for Crown Cases Reserved.

This Court was established by the 11 & 12 Victoria, ch. 78, for the purpose of considering points of law in cases of treason, felony, or misdemeanor, which shall have been reserved for that purpose, at the trial of any prisoner, either at the Assizes or Quarter Sessions. The sittings are held in the

Exchequer Chamber at Westminster Hall, before five at least of the Judges, of whom a Chief Justice, or the Chief Baron must be one.

The House of Peers is the supreme court of all, to which lies an appeal from all the other courts.

The Courts of Assize and Nisi Priùs. These are composed of two or more commissioners, now always the Judges, and one or two Serjeants and Queen's Counsel, to go twice a year through the different counties, and to inquire, by means of a jury, into the truth of *facts* then in dispute in the Courts of Westminster Hall. The causes in dispute are appointed to be tried in Westminster, in some Easter or Michaelmas Term, on a certain day, *unless before* that day the Judges of Assize shall come into the county in which the dispute has originated. Hence they are called *Nisi Priùs*. They are called also Courts of Assize, because the commission is directed to the Judges therein named to take *assizes* or verdicts by a particular species of jury, formerly called an assize and summoned for the trial of landed property.

ECCLESIASTICAL COURTS.

Originally there was no distinction between lay and ecclesiastical jurisdiction; but at the Conquest, the ecclesiastical courts were separated from the civil, and though afterwards united by Henry I., yet they were very soon completely severed from each other, and each held their separate jurisdiction;

the temporal courts adhering to the laws of England, the spiritual adopting, as their rule of proceeding, the laws of Rome, or the civil law. The lowest of the Ecclesiastical Courts is

The Archdeacon's Court. It is held in the Archdeacon's absence before a Judge appointed by himself, and called his Official. An appeal lies from his court to the Bishop of the diocese.

The Consistory Court of every diocesan Bishop is held in his respective cathedral, for the trial of ecclesiastical causes within his district. The Bishop's Chancellor is the judge; and an appeal lies from his decision to the Archbishop of the province.

The Court of Arches is a court of appeal belonging to the Archbishop of Canterbury, wherein the judge is called the Dean of the Arches, because he held his court formerly in the Church of St. Mary-le-Bow (*Sancta Maria de Arcibus*). This and all the principal Ecclesiastical Courts are now holden in Doctors' Commons. An appeal lies from the Court of Arches to the Queen's Privy Council, by statute 2 & 3 William 4, ch. 92.

The Court of Peculiars is a branch of, and annexed to the Court of Arches, to which an appeal from it lies.

The Prerogative Court is established for the trial of all testamentary causes, where the deceased has left personal property in two different dioceses, in which case the probate of wills belongs to the Archbishop of the province. All causes relating to wills or legacies in such cases, are tried before

a judge appointed by the Archbishop, called the judge of the Prerogative Court, from whom an appeal lies to the Privy Council.

The Court of Delegates was formerly appointed by the King's commission, issuing out of Chancery, to represent his royal person, and to hear all appeals made to him from other courts. These appeals were formerly made to the Pope: but on the Reformation, they were directed to be made to the King, as head of the Church. The judicial committee of the Privy Council is now by statute constituted the Court of Appeal in all Ecclesiastical causes, as it is expressly provided by a late act, that in all cases where persons might have appealed formerly to the Court of Delegates, they may now appeal to Her Majesty in Council.

The Privy Council has also superseded the *Court of Commissioners of Review*, which was formerly granted, in extraordinary cases, by the Sovereign, as supreme head of the Church, not as a matter of right, but of favour, to revise the sentence of the Court of Delegates.

COURTS MILITARY. These have entirely gone out of use; they were formerly courts of *Chivalry*, held before the High Constable of England and Earl Marshal, and had cognizance of matters touching deeds of arms and war.

MARITIME COURTS.

There is only one, the Court of Admiralty. It is held before the High Lord Admiral, or his deputy

who is judge of the court. Appeals from the Vice Admiralty Courts in our colonies abroad were formerly brought before the Courts of Admiralty in England. But they are now brought before the Queen in Council, which is a court of appeal from the Admiralty Court, and consists of the Queen's Privy Council. By a late statute (6 & 7 Victoria, ch. 38), they are referred from the Privy Council to the Judicial Committee of the same.

These are the several courts of common law and equity, which are of public and general jurisdiction throughout the kingdom.

COURTS OF SPECIAL JURISDICTION,

Are confined to particular spots, or instituted only to redress particular injuries. These are

The Forest Courts, for the government of the Queen's Forests,—now in total disuse.

The Courts of Commissioners of Sewers. These are temporary tribunals, erected from time to time, by virtue of a commission under the great seal, pursuant to the Statute of Sewers, 23 Henry 8, ch. 5. The jurisdiction of these courts, which are of growing importance, now that sanitary measures are more attended to, is to superintend the repairs of sea banks, and sea walls, and the cleansing of rivers, public streams, sewers and conduits. They have the power of inflicting fines, and also a power given them by statute, of imposing a tax upon each parish within their jurisdiction, in proportion as it

is benefited by their regulations. Romney Marsh, a large district in Kent, from which the sea appears to have retired at no very distant date, is governed by ancient laws of sewers.

The Court of Policies of Assurance. These are fallen into disuse, as all insurance causes are now tried by a jury under the opinion of the Judge on legal doubts.

The Court of the Marshalsea and the Palace Court at Westminster. These were courts anciently distinct, but of late years united into one, over which the Steward of the Household, the Knight-Marshal, and the Steward of the Court used to preside, to hear pleas of all personal actions within twelve miles of Her Majesty's Palace at Westminster. These courts no longer exist, and their jurisdiction is transferred to the Superior Courts of Westminster Hall, or to the Westminster County Court.

Courts in the Principality of Wales. In addition to courts established in that country similar to our Courts Baron and Hundred Courts, a great Session was formerly held twice a year in each county, by Judges appointed by the Sovereign, in which all pleas of real and personal actions were held in the same manner as in our Courts of Exchequer and Common Pleas. These courts were abolished by the 1 William 4, ch. 70, being the act for the more effectual administration of justice: and Assizes are now held twice a year in Wales, exactly in the

same manner as in England, for the trial of all civil and criminal cases.

The Court of the Duchy Court of Lancaster is held before the Chancellor of the Duchy or his deputy, in all matters of equity, relating to lands held under the Queen in the Duchy. This court is not a Court of Record.

Courts appertaining to the Counties Palatine of Chester, Lancaster and Durham, and the Royal Franchise of Ely. The Judge of Assize, who formerly sat in them, sat by virtue of a special commission, from the owners of the several Franchises. Of these the franchise of Ely no longer exists; the secular authority of the Bishop being now vested in the Crown. The jurisdiction of the County Palatine of Chester was abolished by a late statute (11 George 4 & 1 William 4, ch. 70); and by other statutes. The practice of the Courts of Lancaster and Durham has been rendered analogous to the proceedings of the Superior Courts at Westminster.

Similar to the Courts of the Counties Palatine, are the Courts of the Cinque Ports, or the five most important, as they were formerly considered, Ports of the Kingdom, *viz.* Dover, Sandwich, Romney, Hastings, and Hythe, to which Rye and Winchelsea were afterwards added. In these courts the Mayor and Jurats of the several Ports preside; and an appeal lies from them to the Lord Warden in his Court of Shepway; and from thence

to the Court of Queen's Bench. It may be here observed that a writ of error lies from all the other courts to the same Supreme Court, as an ensign of superiority reserved to the Crown at the original creation of the Franchises.

The Stannary Courts in Devonshire and Cornwall, for the administration of justice among the tinners, who are privileged from suits in other courts, except in pleas of land and in criminal matters. The Stannary Courts are Courts of Record, but of a limited jurisdiction, and are held before the Lord Warden and his deputies. There is no appeal from them to any Court in Westminster Hall, but to the Privy Council of the Prince of Wales as Duke of Cornwall, and thence to the Sovereign in the last resort.

The Courts within the City of London, and other boroughs, cities, and corporations, held by prescription, charter, or Act of Parliament. In these the Courts of Westminster have either a concurrent jurisdiction or a superintendency over them.

There is also another Metropolitan Court, called *The Central Criminal Court*, established by 4 & 5 William 4, ch. 36,—which has jurisdiction over offences committed in London and Middlesex, and certain districts of Essex, Kent, and Surrey. This court is presided over by two or more of the Judges of the Superior Courts, who sit there in rotation; and also by the Recorder of the City of London, and the Common Serjeant.

The Courts of Conscience and Requests, for the

recovery of small debts. These were erected in the city of London, and other trading districts, and were constituted by Act of Parliament. They were courts to hear and determine all causes of debt not exceeding forty shillings. They are now merged in the jurisdiction of the County Courts, and of the Sheriffs' Court in London, where claims for sums not exceeding 50*l.* are heard and determined in a summary way.

The Chancellor's Courts in the two Universities are another species of private courts, in which those learned bodies enjoy the sole jurisdiction over all civil actions or suits, whenever a scholar or privileged person is one of the parties, and is a resident within the University.

This privilege of the two Universities is very ancient, particularly in the case of Oxford, their charter having been granted to them in the 28th year of King Henry III., A. D. 1244; and subsequently extended and confirmed in the 14th year of King Henry VIII.

That granted to Cambridge dates from the 3rd year of Queen Elizabeth. But that Sovereign in the 13th year of her reign, granted an Act to confirm all the charters of both Universities, which Sir Edward Coke calls a blessed Act. In the courts of the Universities, those learned bodies have the option of carrying on the proceedings according to their own particular customs, or to the common law of the land. These customs frequently having emanated from the civil

law, the process has generally more resembled that, than the ordinary jurisdiction of the kingdom.

At Oxford the Vice Chancellor presides in the Court of the University, either in person, or by his deputy or assessor. An appeal lies from his decision to delegates appointed by the congregation: thence to other delegates of the House of Convocation; and finally, to delegates appointed by the Crown, under the Great Seal in Chancery. The privileges of the University of Oxford, as regards personal suits, are more extensive than those of Cambridge. In the case of the latter, they are confined to the town and its suburbs; in that of the former, they comprise suits arising in any part of England.

The sittings of the Superior Courts of Law, described to you in this Letter, are all held in Westminster Hall, except where causes of action arise within the city of London; in which case parties have the privilege of trying them at Guildhall. The Courts of Equity sit sometimes in Westminster Hall, and sometimes in Lincoln's Inn.

The Courts in Westminster Hall are incommodious, and totally unsuited to the requirements of the times; and it is much to be desired that buildings more commodious and more commensurate with the dignity of justice and of a great nation, should be erected, both for Law and Equity, at one spot in some central position of the Metropolis, or in the vicinity of the Inns of Court.

Yours, &c.

LETTER XX.

PRIVATE WRONGS.

OF THE COGNIZANCE OF PRIVATE WRONGS.

In my preceding Letter I explained to you the different courts of justice, which have been established in England, for the redress of injuries; and it will now be my object to inquire, in which of this vast variety of them, every possible injury that can be offered to a man's person or property, is certain of meeting with redress.

Of what wrongs courts of a special jurisdiction can take cognizance, has already been remarked as those respective tribunals were enumerated; and, therefore, I shall confine myself to the cognizance of civil injuries in the several courts of public or general jurisdiction. These courts have been already divided into four: *Ecclesiastical*; *Military*; *Maritime*, and *Common Law*; and I will now consider the actions that may be brought in each.

WRONGS COGNIZABLE BY ECCLESIASTICAL
COURTS.

Pecuniary Causes are such as arise from the withholding of ecclesiastical dues ; from the doing, or from the neglecting to do, some act relating to the church. The principal of these causes is the withholding the tithes from the parson or vicar ; the non-payment of dues and surplice fees to the clergy ; the spoliation or dilapidation of the church, or the parsonage house.

Matrimonial Causes are injuries respecting the rights of Marriage. These, properly speaking, belong to the civil courts, but in some instances are under the cognizance of the ecclesiastical. As when a party boasts, or gives out that he or she is married to another ; on this ground the party aggrieved may proceed in these courts ; and unless the person complained of proves a marriage, the court will pronounce perpetual silence on this head. The restitution of conjugal rights is another cause : which takes place when either party lives separate from the other without sufficient legal reason. In this case the Ecclesiastical Court can order the husband and wife to live together, if either party wishes it. Divorces also are cognizable by the Ecclesiastical Judge, who can pronounce a divorce from bed and board, in those cases where the cause has arisen *since* marriage, but cannot sufficiently dissolve the union, so as to enable the

parties to marry again: this can only be done by Act of Parliament. But in cases where the cause of incompetency to fulfil the contract of marriage existed *previously* to the marriage, as in the case of minority, or consanguinity, then the Ecclesiastical Court has the power of dissolving the marriage so entirely, as to restore the parties to the same situation as if no marriage had ever been celebrated. A suit of Alimony is another species of matrimonial cause; which is a consequence of a divorce from bed and board only, it being an action by the wife for a sufficient maintenance to be furnished by the husband, after their separation.

Testamentary Causes. The privilege of the cognizance of testaments or wills, is enjoyed by the clergy, not as a matter of right, but by the special indulgence of the Municipal law. It originated in the powers of the Bishop to compel, by ecclesiastical censures, bequests to *pious uses*: and, therefore, wills fell within the jurisdiction of the spiritual courts, by the express words of the charter of King William, at the Conquest; and when afterwards Henry I directed that the goods of an intestate should be divided for the *good of his soul*, all intestates' effects became spiritual uses, as much as legacies to *pious uses* had been before. This jurisdiction is divisible into three branches,—the probate of wills, the granting of letters of administration, and the suing for legacies where they are withheld. The two former are matters of course,

unless the will is disputed, or the next of kin is uncertain. In the latter case, the Courts of Equity exercise a concurrent jurisdiction.

WRONGS COGNIZABLE BY COURTS MILITARY.

The object of these courts, otherwise called Courts of Chivalry, is to redress injuries to honour, to keep up the distinction of quality and degrees, and to correct the encroachments of heraldry and coat armour. The injuries to honour, for which redress was formerly sought and obtained in these courts, were such as the Courts of Common Law could not take cognizance of, as if a man should call another a coward, or give him the lie. The satisfaction and amends granted were not of a pecuniary character, but were in the nature of reparation by verbal apology. This province of the Courts Military has fallen into total disuse, as well as that for correcting matters of heraldry and coat armour, which formerly engaged much of the public attention, but are now become the study of certain officers of the court, called Heralds, whose testimony of descent is not considered of much authority, nor is it admissible as evidence in courts of justice; although the visitation books, compiled when progresses were made in different counties, to inquire into the state of families, with reference to their marriages and descents, are allowed to be good evidence of pedigree, if verified on oath.

The term Courts Military is now usually applied

to those proceedings styled Courts Martial, wherein matters relating to the conduct and discipline of the army are tried before certain officers, with the assistance of the Judge Advocate or his deputy.

WRONGS COGNIZABLE BY COURTS MARITIME.

These courts have jurisdiction to try all manner of causes committed on the high seas, out of the reach of our ordinary Courts of Justice. But as it is a common thing to consider contracts, though made at sea, yet to have been made within the cognizance of Courts of Common Law, these disputes are generally settled in them. All contracts too, of a mixed nature, such as are made upon land, but to be executed at sea, or made upon sea but to be executed on land, are determined in the Courts of Common Law, and not in the Admiralty Courts. In cases of prizes in time of war, taken at sea, and brought into our ports, the Courts of Admiralty have an exclusive and undisturbed jurisdiction to determine the same according to the laws of nations. By a late statute (3 & 4 Victoria, ch. 65), the Dean of Arches is made an assistant Judge to the Judge of the High Court of Admiralty in all suits and proceedings in that Court.

WRONGS COGNIZABLE BY THE COURTS OF COMMON LAW.

All possible injuries that do not fall within the exclusive cognizance of either of the Ecclesiastical,

Military, or Maritime Courts, are within the cognizance of the Common Law Courts of Justice. These injuries, and their respective legal remedies, will occupy our attention for many subsequent Letters. But before I conclude this Letter, I will mention two species of injuries; one of which is, where justice is delayed by an inferior court that has a legal cognizance of the cause; and the other, where such inferior court takes upon itself to examine and decide without a legal remedy.

In the first case, the Court of Chancery may issue a writ, commanding such inferior court to *proceed* to judgment; or a writ of *mandamus*, (so called from *mandamus*, *we command*, being the first word of the writ), may issue out of the Queen's Bench, requiring such inferior court to do some particular thing therein specified.

In the second case, where there is an encroachment of jurisdiction, a *prohibitory* writ issues either out of the Court of Chancery, Queen's Bench, Common Pleas, or Exchequer, to command the inferior court to cease from the prosecution of the matter before them, on a suggestion, that either the cause originally, or some collateral matter arising therein, does not belong to that jurisdiction, but to the cognizance of some other courts.

There is also another writ somewhat analogous to the above, called the writ of *quo warranto*, from two words, meaning "by what warrant," which issues from the Queen's Bench against any one who usurps

or exercises any office or franchise without legal authority. This writ is most usually applied for in the case of Municipal Corporations, where the mayor or other officer of a borough is elected under a defective title. The proceedings under a *quo warranto* are regulated and restrained by many statutes, and particularly by 7 William 4, ch. 78, and 6 & 7 Victoria, ch. 89; which provide that application for the writ must be made within twelve months after the election.

Yours, &c.

LETTER XXI.

PRIVATE WRONGS.

OF WRONGS AND THEIR REMEDIES, AFFECTING

1. THE RIGHTS OF PERSONS,

AND

2. THE RIGHTS OF PROPERTY.

As all Wrong may be considered as a privation of Right, the natural remedy for every species of wrong, is the restitution of that right whereof the party injured is deprived. This may be done either by the delivering up of the subject-matter in dispute, or by making the sufferer a pecuniary compensation in damages. The means whereby this possession, or these damages, are obtained, are called *actions or suits at law*, by which property is demanded, and personal damages for a wrong required.

As I divided all Rights into Rights of *Persons*, and Rights of *Things*; so I will make the same

distribution of injuries, into such as affect the *Rights of Persons*, and the *Rights of Property*.

1. THE RIGHTS OF PERSONS.

The Rights of Persons are either *absolute* or *relative*; the former are such as belong to private men, considered as individuals; the latter are incident to them as members of society, and connected with each other by various ties and relations.

THE ABSOLUTE RIGHTS OF PERSONS,

Are the Rights of *Personal Security*, of *Personal Liberty*, and of *Private Property*.

Personal Security. Injuries affecting the *lives* of individuals come within that part of the subject which will be hereafter treated of in the Criminal Code.

Injuries affecting the *limbs* and *bodies* of individuals, may be committed by threats of bodily hurt where there is a present ability to carry the threat into execution; by assault, which is either striking or attempting to strike another; by battery, which is a lower stage of assault, though now generally joined in a plea of assault; by wounding, and by mayhem, which is an aggravated species of battery, whereby a man is deprived of the use of a limb.

Injuries affecting a man's *health*, are where, by any unwholesome practices of another, a man sustains any manifest damage to his health or consti-

tution ; as by the exercise of a noisome trade, or by the neglect or ignorance of his surgeon.

Injuries affecting a man's *reputation*, are by malicious, scandalous, and slanderous words, whereby a man is injured in his trade or profession. A man's reputation may also be injured by written or printed libels, which set him in an odious or ridiculous light. There are two ways of punishing a libeller. 1. By indictment ; in which case, a libel being considered as tending to a breach of the peace, and therefore a public offence, is equally a libel, whether true or false, and punishable as such. 2. Or by action, which is a private and personal remedy, wherein the party injured seeks a reparation in damages ; and therefore the truth or falsehood of the libel, and the damage sustained, are a material question.

Personal Liberty, is affected by false imprisonment, for which the law has decreed a punishment as a public crime, and has also given to the party injured a private reparation by an action for damages. To constitute false imprisonment, two things are necessary ; the detention of the person, and the unlawfulness of such detention. Any detention in any place is considered in law an imprisonment ; and it is an illegal imprisonment if it is done without lawful and sufficient authority. The remedy for false imprisonment, besides the private remedy by an action for damages, is the *Writ of Habeas Corpus*, already explained to you in a

former Letter. This is the most celebrated Writ in the English Law, and is justly called the guardian of English Liberty. There are three or four writs of Habeas Corpus, used for the purpose of expediting justice in various courts. But the great and efficacious writ in all manner of illegal confinement, is that writ, directed to the person detaining another, and "commanding him to produce the body of his prisoner, with the day and cause of his capture and detention, to do, and submit to, and receive whatsoever the Judge or court awarding such writ shall consider in that behalf." So that no person can be imprisoned without the liberty of applying for this writ to inquire into the legality of his imprisonment; when, if it shall appear that there is a probable ground that the party is imprisoned without legal cause, this writ is obtained as a matter of right. In times of civil commotion and rebellion, it is not unusual to pass an Act of Parliament to suspend this right of applying for a writ of Habeas Corpus for a limited time, as the safety of the state may require the detention of many persons, whom perhaps there might not be the immediate means of bringing to trial. But this is done only in extreme cases, so sacred and so important is this great safeguard and bulwark of our liberties.

Private Property. These rights, though the enjoyment of them, when acquired, is strictly a *personal* right, yet you will more readily under-

stand the wrongs affecting them if I class them under the second head.

THE RELATIVE RIGHTS OF PERSONS.

Injuries may be done to persons, considered as members of society, in the four following relations; as Husband and Wife; as Parent and Child; as Guardian and Ward, and as Master and Servant.

As Husband and Wife. The first injury that may be inflicted on a Husband, is the taking away his wife, either by persuasion, fraud or open violence: in all which cases the law supposes constraint, and the husband may have an action of trespass at common law against the person so taking his wife away, and may recover damages. The next injury is adultery; which, though as a public crime, is left by our laws to the coercion of the Spiritual Courts, yet, considered as a civil injury, the law gives a satisfaction to the husband for it by an action against the adulterer; and the damages awarded by the jury are generally increased or diminished according to circumstances. Another injury, for which the husband may bring an action, and recover damages, is that of any person beating and ill-using his wife; this, if a common assault, will be remedied by the usual action to recover damages brought in their joint names; but if the maltreatment is so great, that the husband is deprived of his wife's company and

assistance, then he may have a separate remedy for this ill-usage, and recover damages accordingly.

As Parent and Child. Formerly, the marrying the son and heir without the father's consent was an offence cognizable by law; but as the military tenures, on which this injury rests, have ceased, the injury has ceased with them. The taking away his children also is an injury, and is remediable in the same manner as in the case of a husband from whom his wife has been taken. The taking away of children under ten years of age, either by force or fraud, from their parents or guardians, is also a felony by statute, and punishable with transportation.

As Guardian and Ward. This relation is similar to the last, and the same remedies are given by law for similar injuries to it. But a more speedy and summary method of redressing all complaints relative to Wards and Guardians is now obtained by an application to the Court of Chancery, which is the supreme Guardian and has the superintendent jurisdiction of all the infants in the kingdom.

As Master and Servant. There are two species of injuries incident to the rights accruing from the relation between Master and Servant. One is, the inducing a man's hired servant to leave his master before his time is expired; the other is, the beating or confining him so that he is not able to perform his work. In either case the master may bring an action against the person decoying or ill-treating

his servant, and may also proceed against his servant for non-performance of his agreement. I shall now proceed to the second head of injuries; *viz.*, those affecting,

2. THE RIGHTS OF PROPERTY.

As I divided Property into *personal* and *real*, the former consisting of goods, money, and all other moveables; the latter, of such things as are permanent and fixed, as lands and tenements,—so I will now follow the same division in treating of the injuries affecting those rights, and the remedies which the law has given to repair and redress them.

Injuries affecting property are of two kinds: 1, those affecting *personal* property; and 2, those affecting *real* property. Again, injuries affecting *personal* property are twofold: 1, those affecting *personal* property in *possession*; and 2, those affecting *personal* property in *action*.

INJURIES AFFECTING PERSONAL PROPERTY,

In Possession, are twofold; the *unlawful taking* away, and the *unlawful detaining* it.

The unlawful taking. This, upon every principle, is clearly an injury; for it follows as a necessary consequence, that, when a man has once gained a rightful possession of any thing, whoever by fraud or force dispossesses him of it, is guilty of a transgression against the laws of society. The

remedy which the law gives is the restitution of the property, with damages for such unlawful invasion of it. I shall not in this, nor in the subsequent discussion of the injuries affecting real property, enter into the various species of suits at law or actions by which the injured person may recover his property and obtain a satisfaction in damages for the unlawful taking it away. It will be sufficient to say generally, that, according to the circumstances of the case, various processes and forms of actions are open to the injured party for redress and compensation.

The unlawful Detention. It is possible, as in the case of borrowing a horse, or other property, and of not restoring it, for the *taking away* to be lawful, but the *detention* illegal. In these and similar cases the injured party may bring his action to recover his property, and receive a satisfaction in damages for such unlawful detention.

INJURIES AFFECTING PERSONAL PROPERTY,

In Action.

Property in action consists in such rights as are founded in *contracts*; and the injury to such property is the breach of such contracts, for which the law has provided also various remedies. Contracts may have either an *expressed* or *implied* condition.

Expressed Contracts are *Debts*, due on promissory notes or agreements, bonds, or special bargains; on *covenants* contained in deeds or leases,

to perform certain acts and conditions; on *promises*, which are in the nature of a verbal covenant, and want nothing but the writing and sealing to make them absolutely the same. In all these cases the party injured may proceed against the wrong doer by the particular form of action which the law prescribes.

Implied Contracts are such as reason and justice dictate, and the law presumes every man has contracted to perform: as where one man employs another to transact any particular business, or perform any particular work, the law implies that the person employing the other undertook to pay him for his work; where a man receives money for another; where a man has laid out his own money for the use of another at his request; or where a man, having undertaken an office or employment, undertakes by the acceptance of it an implied contract to perform his duty properly. In all these cases the law has given a remedy to the injured party by different kinds of actions applicable to the particular case.

INJURIES AFFECTING REAL PROPERTY

Are principally the following:

Dispossession of the Freehold: whereby the wrong doer gets into actual possession of the land, and obliges him that hath the right to seek his legal remedy, in order to gain possession and damages for the injury sustained. This dispossession

may be effected in various ways, according to the advantageous position obtained by the party dispossessing, either through the operation of law, or in consequence of the supposition that he was obtaining his own rights. The remedies for these different species of dispossession are also various; as besides the right of entry, if peaceable, there are various descriptions of actions or suits at law, according to the particular mode of dispossession. The most usual method of trying a title to lands and hereditaments is by an action of ejectment or trespass.

Trespass is another injury to the Freehold, and, in its enlarged sense, is considered any transgression or offence against the law of nature or of society; but, in the limited sense, it signifies entry on another man's ground in his own person or by his cattle without permission or lawful authority. In these cases the injured party may proceed at law, and the wrong doer may justify his trespass, or not, according to circumstances.

Nuisance is where a man encroaches on another's grounds, or on his natural rights by erecting buildings, or other obstructions, so as to overhang or disturb the rights of his neighbour; by corrupting the air, by carrying on an unwholesome and noisome trade, or by stopping or diverting an ancient watercourse. For these and other injuries of a private nature, besides the power of abatement in the injured person, the law has given a private remedy by action. For nuisances of a public nature, the remedy is by indictment.

Waste. This is by destruction of, or damage done to, lands and tenements; whereby the person who has an estate only for life or for years, injures or destroys the buildings or timber, destined afterwards to be the uncontrolled property of another. The remedies of Waste are certain suits at law, pointed out by the laws for that purpose; they may also be obtained by an injunction from the Court of Chancery, to restrain the wrong doer from committing waste. This last is the most usual proceeding.

Subtraction is where a person owes any suit, duty, custom, or service, to another, and neglects to perform it.

Disturbance. This is a wrong done to some incorporeal hereditament, by hindering or disquieting the owner in his regular and lawful enjoyment of it; as where a man having the franchise of holding a Court Leet, or of keeping a Fair, is incommoded by another in the lawful exercise thereof; or where a man having a right of common, such right is interrupted or disturbed; or where a man having a right of way over another's grounds, is obstructed by enclosures; in all these and similar cases, particular remedies by particular processes and actions at law are pointed out by the laws for the restoration of the right, and the reparation of the damage sustained.

I have thus cursorily explained to you the injuries affecting personal and real property, and the remedies applicable to those injuries; it would have

been foreign to my purpose, to have entered more largely into a subject of some difficulty and little interest; but I have given you a sufficient insight into it, to shew you that there are no injuries capable of being sustained by a man either in his person or property, for which our most excellent code of jurisprudence has not offered an adequate remedy.

Yours, &c.

LETTER XXII.

PRIVATE WRONGS.

THE PROCEEDINGS IN AN ACTION AT LAW.

HAVING avoided, in my preceding Letter, confusing you with the different species of actions adapted to the various injuries which a man may receive in his person or property, I will now shortly trace, for your amusement, the progress of a suit at law, from its first commencement to its final judgment. In this history, you will see how admirably adapted the whole proceedings are, to the obtaining of substantial justice. You will perceive that although the imputations of delay and uncertainty with which the Law is frequently charged, are not altogether unfounded as regards some of its practical details, yet, that the rejection of all superfluous and extraneous matter, and the laying bare of the real point in dispute, for the decision of the tribunal before which the action

is to be tried, are the great ends of the proceedings, and that on the whole these objects are obtained in a manner very advantageous to all parties, and very conducive to the impartial administration of justice.

When a person hath received an injury, and thinks it worth while to demand satisfaction, he must first of all consider, what redress the law hath given him, and what specific remedy he must pursue. When the particular species of action is determined, and the particular court in which the action is to be brought, he must sue out of that court, whether it be the Queen's Bench, Common Pleas, or Exchequer, the particular writ which gives the Court a jurisdiction in the proceedings, and enables it to proceed to the determination of the cause.

A copy of this writ is served upon the defendant in person, who thereupon puts in what is called an *Appearance* to the action. If he purposely keeps out of the way, and an affidavit is made to that effect, service upon any of his family at his residence will be held sufficient.

Then follow the pleadings, which are set down upon paper, and delivered into the proper office, and are, in fact, the mutual altercations between the plaintiff and defendant. The first of these pleadings is the *declaration* on the part of the plaintiff, setting forth the cause of complaint. When the plaintiff hath thus stated his case in

his declaration, the defendant makes his defence, either by demurring to the sufficiency of it in law, or by putting in his plea; in which it is not to be understood that he *defends* or justifies the cause of complaint, but only that he opposes or denies the truth or validity of it. This plea may either be a general denial of the whole declaration of the plaintiff, or a special plea in bar of the plaintiff's demand. When the defendant's plea or answer is thus put in, the plaintiff may plead again, if the defendant has only evaded, without totally contradicting the declaration; this is called his replication: the defendant may rejoin, and the plaintiff answer; and the plaintiff answer again by what is called a surrejoinder; the whole of which is denominated the *Pleadings*, in the several stages of which, the title or defence which the party insisted on, must not be departed from or varied. As soon as in the course of the pleadings the parties come to a point which is affirmed on one side, and denied on the other, they are then said to be *at issue*; all their debates being at last contracted into a single point, which must now be determined either in favour of the plaintiff or defendant.

This *issue* or *end* of the pleadings may either be on matter of *law* or matter of *fact*. If the former, as in the case of a demurrer by the defendant to the sufficiency of the plaintiff's declaration, the Judges of the Court before which the action is brought, must determine it. But if the

latter, then it must be inquired into by *the country*, which is represented by a Jury of twelve men, sworn to inquire into the truth of the fact. This Jury is taken promiscuously out of a number of freeholders, who are summoned by the Sheriff, to attend at the Assizes or Sittings, and there inquire into the truth of the fact, on which issue has been joined by the plaintiff and defendant.

In important cases a special jury is empanelled, at the expense of the party requiring it, composed of men superior in intelligence and education to those who ordinarily compose the Common Jury.

When the general day of trial is fixed, the record of the proceedings is brought down to the Assizes, and entered with the proper officer, in order to its being called on in course; or it is entered at the Nisi Prius sittings in London or Middlesex, which are periodically held before the presiding Judges of the several Courts of Westminster Hall, accordingly as the action is laid. These sittings formerly disposed of a vast number of important causes at very great expense to the parties concerned; for the business being heavy, and the cases often in arrear, they were constantly postponed from time to time till they could be brought to a hearing: the witnesses and persons engaged in them being kept in town at considerable expense and detriment to their own business at home. Since the institution, however, of the County Courts, parties can obtain the settlement of their just claims, at all events up

to a certain amount, within their own districts, and the evils so much complained of have gradually abated. Still it is to be wished that more facilities were given for the trial of causes in the Metropolis, and an opportunity afforded by more frequent sittings of the Superior Courts, to remove the stigma of procrastination and delay, which, notwithstanding the learning, intelligence, and industry of the Judges, now necessarily attaches to the administration of justice.

When the cause is called on, the Jury are empanelled, and sworn "well and truly to try the issue between the parties, and a true verdict give according to the evidence." But before they are sworn, either party may challenge any of them, that is, except to their being on the Jury, on account of partiality, or any other default, allowable by law, as a ground of exception; or the whole number empanelled by the Sheriff, may be objected to, if returned by him under the supposed influence of partiality or other default.

As soon, however, as the Jury are sworn, the plaintiff opens his case, and calls his witnesses, who are examined on oath to prove it. The defendant replies, and calls his witnesses in support of his defence. The plaintiff replies; but if there are no witnesses for the defence, he is not entitled to reply: the Judge then sums up, making such observations as he shall think the nature of the case may require; and then the Jury either remain in

Court, or retire to consider of their verdict, if the case is one of difficulty. As soon as they are agreed, the foreman delivers their verdict, either for the plaintiff or defendant, as it shall happen; and this is recorded as the decision of the cause in dispute.

The trial by Jury ever has been, and I hope ever will be looked upon, as the glory of the English law. It is the most transcendent privilege which any subject can enjoy or wish for, that he cannot be affected in his property, his liberty, or his person, but by the unanimous consent of twelve of his neighbours and equals. The impartial administration of justice, which secures our persons and our properties, is the great end of civil society. If that were entirely entrusted to the Magistracy, their decisions, in spite of their own natural integrity, might have frequently an involuntary bias. If, on the other hand, the power of the Judicature were placed at random, in the hands of the multitude, their decisions might be wild and capricious. It is wisely therefore ordered, that the axioms of law should be deposited in the hearts of the Judges, to be applied occasionally to such facts as come properly ascertained before them. But in settling a question of fact, a competent number of sensible and upright Jurymen, chosen by lot from among those of the middle rank, will be found the best investigators of truth, and the surest guardians of public justice.

The word *verdict* has consequently been by common consent almost universally held sacred in its application, and confined in its sense to the decision or opinion of a Jury; it is so called, because it is *verè dictum*, "upright, even the word of truth."

Yet even the wisest institution is seldom without some anomalies: of this nature is the regulation, that if, after a Jury are once charged with a prisoner in a criminal case, they cannot agree upon their verdict, they are to be kept together without meat, drink, or fire, except by permission of the Judge, till they are unanimously agreed. This method of accelerating unanimity cannot in any way advance justice, inasmuch as it surrenders the verdict to that man on the Jury who is possessed of the greatest physical strength and endurance.

The practice ought, therefore, to be discontinued, and such moderate refreshment allowed without the interference of the Judge, as would enable each Juryman to have, in the event of a lengthened discussion, the full use of those faculties, which long abstinence must unavoidably impair.

I may add that the necessity of a total unanimity among the Jury is peculiar to our constitution. In the case of the Nembda, or Jury of the ancient Goths, the consent of the majority only was required even in criminal cases; and where the opinions were equal, the prisoner was always acquitted.

The next step towards the completion of an action at law is the judgment of the Court upon what has previously passed, both the matter of law and the matter of fact having been now fully weighed and adjusted. The verdict at the trial is entered on record, and returned to the Court from which it was sent. But as it cannot be entered till the next term after trial had, any defect of justice, inadvertence, or misconduct, may be stated to the Court in arrest of its judgment, and the whole proceedings set aside. There is also another remedy to cure any unjust determination, and to give the party injured an opportunity of having a doubtful decision reviewed: this is by moving the Court to grant a new trial, either on account of the misdirection of the learned Judge who tried the cause, or on account of the improper reception of evidence, or because the verdict has been given contrary to evidence. The facts of the case are by these means re-examined and again inquired into, and any error in the proceedings rectified; although it must be allowed that the privilege of demanding a new trial is frequently abused, and parties often put to unjustifiable expense, after disputes have received an impartial and just decision, upon the most frivolous and untenable grounds.

If no steps are taken to disturb the verdict, after judgment execution immediately follows; but still, if the party condemned thinks himself unjustly

aggrieved by any of these proceedings, he has his remedy to reverse them by several writs of appeal, the chief of which is a writ of error, to a higher tribunal, namely the House of Lords.

But if none of these steps are taken, then the last step is the execution of the judgment of the Court, or the putting the sentence of the law in force: this is performed in different manners, by different writs, according to the nature of the action upon which they are founded and of the judgment which is had and recovered.

Yours, &c.

LETTER XXIII.

PRIVATE WRONGS.

COURTS OF EQUITY.

I HAVE already explained to you the different species of Courts of Law, and the various proceedings by which the administration of justice is carried on in England. Here my subject would naturally draw to a conclusion; but as the proceedings in the Court of Chancery, which is a Court of *Equity*, are very different from those of *Common Law*, and as their object and jurisdiction are very often misunderstood, I will very shortly explain to you the meaning of Equity as contradistinguished from that of Law.

Equity, in its true and genuine meaning, is the soul and spirit of all law; positive law is construed, and rational law is made by it. In the one, equity is synonymous with justice; in the other, with the true sense and sound interpretation of it. But the

terms of a *Court of Equity* and of a *Court of Law*, as contrasted to each other, are apt to mislead us, as if the one judged without equity, and the other were not bound by law.

Equity, in the sense in which it is used when applied to the Court of Chancery, as a Court of Equity, means only that species of a Court of Justice which interferes, relieves, and determines in those cases, and in those branches of jurisprudence, where Courts of Common Law have not the power of interfering. But it is equally bound by rules and precedents, from which it does not depart. The difference between them principally consists in the mode of proof, in the mode of trial, and in the mode of relief. For when facts, from their leading circumstances, rest only in the knowledge of the party, a Court of Equity applies itself to the conscience of a man, and purges him upon oath, to ascertain the truth of the transaction; and that once discovered, the judgment is the same in equity as it is in law. For want of this power of discovery in a Court of Law, the Court of Equity has acquired with every other Court a concurrent jurisdiction in matters of *Account*. From the same compulsory discovery upon oath, a Court of Equity hath acquired a jurisdiction over almost all matters of *Fraud* and *Concealment*, the true construction of *Securities* for money lent, and the jurisdiction over *Trusts* in all settlements, now so complicated and various, arising from the modern system of conveyancing, and from *Testamentary Devises*.

An appeal to Parliament in the House of Lords is the *dernier resort* of the party who thinks himself aggrieved by the final determination of this Court, and is effected by petition, and not by a writ of error, as upon judgments at common law.

I have thus briefly explained to you the Laws of England as affecting the *Rights of Things* and the *Rights of Persons*, and also those *Private Wrongs* which a subject may sustain in his individual or relative capacity. My next and subsequent Letters will be an explanation of those wrongs which are emphatically called *Public Wrongs*, inasmuch as they affect not only the individual, but the welfare of the community at large; and however the properties or persons of the subject may be the direct object of protection by the enactments of the Criminal Code, yet the happiness, prosperity, and well-being of the State are equally under its tutelary care and protection.

Yours, &c.

LETTER XXIV.

PUBLIC WRONGS.

OF THE NATURE OF CRIMES, AND THEIR PUNISHMENT.

A KNOWLEDGE of the Criminal branch of our jurisprudence, which teaches the nature, extent, and degrees of every crime, and adjusts to it its adequate and necessary penalty, is of the utmost importance to every individual in the State; for no rank nor elevation in life, no uprightness of heart, no prudence nor circumspection of conduct, should tempt a man to conclude that he may not, at some time or other, be deeply interested in these researches. The infirmities of the best among us, the vices and ungovernable passions of others, the instability of all human affairs, and the numberless unforeseen events which the compass of a day may bring forth, will teach us, that to know with precision what the laws of our country have forbidden, and the deplorable consequences

to which a wilful disobedience may expose us, is a matter of universal concern.

To you, however, this inquiry is more an object of curiosity, and an addition to your stock of knowledge, than a necessary acquisition for any practical use. Removed in a great measure by your sex and station from those temptations and accidents of life, which sometimes expose us to trying difficulties and to unforeseen dangers, you never can be called upon to discriminate between actions criminal in themselves, or criminal only according to circumstances. If, however, an insight into the criminal code of your country, in addition to the feelings of admiration which its justice and humanity must excite, shall increase your gratitude to God for placing you in a situation above those wants under which your fellow creatures suffer, and above those temptations under which so many fall; and if, above all, it should have a practical effect on your conduct through life, in making you think humbly of yourself and charitably towards all; then the knowledge of the criminal code, even to you, will be an useful and valuable acquisition, and will be productive of the greatest benefit.

Private Wrongs have already been explained to be those civil injuries which individuals sustain in their private capacity, and for which the law has given them a remedy by an action in the name of the party injured. But there is another species of

injury, which, however detrimental to individuals, yet inasmuch as it is an infraction of the public rights belonging to the community at large, is an offence of a public nature, and comes under the appellation of

PUBLIC WRONGS.

The distinction, therefore, between Public Wrongs and Private, between Crimes and Misdemeanors and Civil Injuries, principally consists in this:—Private Wrongs are an infringement of the civil rights of individuals; Public Wrongs are a breach and violation of the public rights and duties due to the whole community. The law, therefore, in taking cognizance of all wrongs, has a double view; to obtain redress for the party injured; and also to secure to the public the benefit of society, by preventing and punishing every breach of those laws established for the government and tranquillity of the whole. The prosecution of these crimes and misdemeanors is therefore carried on in the name of the Sovereign, in whom rests the majesty of the whole community, and who is the proper prosecutor for every public offence.

A *CRIME* or *Misdemeanor*, then, is an act committed in violation of a public law either forbidding or commanding it. In all cases the crime includes the injury. Every public offence is also a private wrong; it affects the individual, and it likewise affects the community. Treason against the Sov-

reign is not only conspiracy against an individual, but, in its consequences, it tends to the dissolution of government. In murder, robbery, and in all offences of similar outrage, there is an injury to the person and to the property; but the public mischief is the material thing for the prevention of which our laws have enacted punishments.

PUNISHMENTS are, therefore, the evils or inconveniences consequent upon crimes and misdemeanors; and this leads us to consider the *power*, the *end*, and the *measure* of human punishment.

1. *The Power* of Human Punishment.

The right of punishing crimes against the law of nature—as murder, theft—is in a state of mere nature vested in every individual. But in a state of society this right is transferred from individuals to the sovereign power; whereby men are prevented from being judges in their own causes, which is one of the evils intended to be remedied by civil society. Whatever power, therefore, individuals had of punishing offences against the law of nature, is now vested in the Magistrate alone, who bears the sword of justice by the consent of the whole community.

But there are other offences which are against the Municipal law only, and to prevent which the temporal Magistrate is empowered to inflict coercive penalties for the transgression of it; and this by the consent of individuals, who either tacitly or expressly invest the sovereign power with the right

of making laws, and of enforcing obedience to them, by exercising severities adequate to the evil. It is the enormity and dangerous tendency of many of these evils, added to their frequency and the difficulty of preventing them, which justifies the Legislature in enacting severe penalties on offences which are apparently slight, or such as are relative, that is, are rendered criminal by statute. Formerly the punishment of death was awarded to offences of by no means the most heinous character. But where the evil to be prevented is not adequate to the violence of the preventive, a law inflicting the punishment of death can never be reconciled to the dictates of conscience and humanity; for to shed the blood of a fellow creature is a matter that requires the greatest deliberation. Life is the gift of God, and cannot be resigned nor taken from us unless by His command or permission, revealed or collected from the laws of nature and society by clear and indisputable demonstration.

2. *The End, or final cause of Human Punishment.*

This is not by way of atonement or expiation for the crime committed, but by way of precaution and preventive against future offences of the same kind. This object is effected either by the amendment of the offender, as by imprisonment or temporary exile; by deterring others by the dread of his example from offending in the like way, which gives rise to all ignominious punishments;

and by depriving the offender of the power of doing future mischief, as by inflicting death or perpetual exile. The same end, that of preventing future crimes, is endeavoured to be answered by each of these species of punishment.

3. *The Measure of Human Punishment.*

The quantity of punishment can never be absolutely determined by any standing invariable rule, but it must be left to the Legislature to inflict such penalties as are warranted by the laws of nature and society, and such as are best calculated to answer the end of precaution against future offenders. It appears, however, undeniable, that punishments of unreasonable severity, especially when indiscriminately inflicted, have less effect in preventing crimes and amending the morals of the people, than such as are more merciful in general, yet properly intermixed with due distinctions of severity. Crimes are more effectually prevented by the *certainty*, than by the *severity* of punishment; for the severity of the laws hinders their execution, and when the punishment surpasses all measure, the public will frequently, out of humanity, prefer impunity to it. The injured, through compassion, will often forbear to prosecute; juries, through compassion, will sometimes forget their oaths, and either acquit the guilty or mitigate the nature of the offence; and Judges, wherever capital punishments are numerous, which is now, happily, not the case in our own country, will

through compassion respite almost all the criminals who are condemned to death, and recommend them to the royal mercy. Among so many chances of escape, the needy and hardened offender overlooks the multitude that suffer; he boldly engages in some desperate attempt either to relieve the pressure of want or to supply his vices, and if unexpectedly the hand of justice overtakes him, he deems himself peculiarly unfortunate in falling at last a sacrifice to those laws which long impunity has taught him to contemn. Such considerations as the foregoing had their influence on the Legislature, when, at the commencement of the present reign, the rigorous punishments which had been long written in characters of blood upon the pages of our criminal statute book were mitigated and reduced. At this auspicious period many crimes which had long been capital became what is called transportable, *i. e.* rendered their perpetrators liable to transportation, either for life or for certain definite periods; while the punishment of death has been continued in the case of the crime of high treason, murder, and some felonies accompanied with violence or danger to the person. The total abolition of the punishment of death is strenuously urged by many zealous philanthropists, and many powerful arguments are brought forward to support their views; but the opinion of our most enlightened and humane Judges leans to the other side of the question; and without entering into a minute dis-

cussion of it, which would be foreign to the purpose of my present Letters, it may safely be asserted, that the certainty of the punishment of death for murder is the greatest safeguard to human life in those very numerous cases of robbery and burglary which come constantly before our notice, and in which the offenders, if they could with comparative impunity remove for ever the principal witnesses to their evil deeds, would not scruple constantly to commit murder, where they now confine themselves to the commission of less grave and serious crimes.

Yours, &c.

LETTER XXV.

PUBLIC WRONGS.

1. OF PERSONS CAPABLE OF COMMITTING CRIMES ;
2. OF PRINCIPALS AND ACCESSORIES ;
3. OF OFFENCES AGAINST GOD AND RELIGION ;
AND
4. OF OFFENCES AGAINST THE LAW OF NATIONS.

As no person is exempt from punishment for disobedience to the laws of his country, I shall enumerate those cases in which the person committing a forbidden act, is excused from the penalty annexed to it; considering these as forming exceptions to the general rule, that all are equally amenable to the laws, and bound to answer for a violation of them. All these pleas and excuses may be reduced to this single consideration, namely, the want or defect of *Will*. An involuntary act cannot induce any guilt; for the concurrence of the will, when it has a choice to do, or to avoid the fact in question, is the only thing which renders human actions either praiseworthy, or culpable.

The first case in which the will does not join with the Act is, that of

Infancy, or *Nonage*, being a defect or imperfect state of the understanding. Infants under the age of discretion, ought not to be punished by any criminal prosecution. But what that age of discretion is, does not depend on the age of the offender, but on his consciousness of guilt, and his discretion between good and evil. In this case, that malice, which is to supply age, ought to be strong and clear beyond all doubt and contradiction.

Idiocy and *Lunacy*, will excuse the commission of a crime, if committed during such incapacity. A Lunatic subject to lucid intervals, will be amenable to the laws, if the offence has been committed during a lucid interval: but this point will be the subject of a jury's determination. But if a person, who is generally considered insane, shall be proved to have been able to distinguish right from wrong, with reference to the act which has been committed, and to have been conscious of what he was about, during the perpetration of the crime, the plea of insanity will not avail him, any more than the plea of infancy, where sufficient discretion and malice have been proved. If, on the other hand, the influence of a morbid delusion renders his mind at the moment insensible of the nature of the act he is about to commit, in that case he will not be legally responsible for his conduct.

The question is, said Lord Denman, C. J., addressing the jury, with reference to delusions of this nature, at the trial of Oxford for shooting at her present Majesty, whether the prisoner was labouring under that species of insanity which satisfies you that he was quite unaware of the nature, character, and consequences of the act he was committing, or in other words, whether he was under the influence of a diseased mind, and was really unconscious at the time he was committing the act, that it *was* a crime.

Drunkenness. This is considered by our law, as an aggravation rather than an excuse for any criminal behaviour. For though the will in this case is not under control, yet inasmuch as it is a voluntary abuse of reason, and may be easily counterfeited, the law will not suffer a man to privilege one crime by another. Nevertheless, where malice forms the chief ingredient in a crime, drunkenness is generally considered with a view to shew the intent of a prisoner's mind.

Misfortune or Chance. Here the accidental mischief must follow the performance of a lawful act, the will observing a total neutrality, and not co-operating with the deed, so that the main ingredient of a crime is wanting. But if the consequence ensues from an unlawful act, the want of foresight is no excuse, and the party is criminally guilty of whatever results from his act.

Ignorance and Mistake: as when a man intend-

ing to do a lawful act, does that which is unlawful, as if a man intending to kill a housebreaker in his own house, which he may lawfully do, for every man's house is his castle, by mistake kills one of his own family, this is not criminal ; but, if thinking he has a right to shoot a man committing a trespass upon his grounds, and in nowise molesting him or his property, he shoots at and kills him, this would be murder. To form a just excuse, the mistake must be in a matter of fact, and not an error in point of law, for this every one is presumed to know.

Compulsion or evident Necessity. In the case of an usurped government, where the Magistrate for the time being orders a person to do a thing which his reason condemns, and which on the restoration of lawful authority is condemned as unlawful, the act is excused. It is so also in the case of a wife, who commits an unlawful act in the company of her husband. She is supposed to be under his coercion at the time, and she cannot commit any crime except treason and murder, and some felonies as before mentioned (*ante*, p. 104). According to the better opinion, however, in cases of misdemeanor, the doctrine of coercion does not apply. Another species of compulsion is, where the act takes place under threats and menaces, but these must apply to an injury of the person, and not of the property. Under the head of Necessity may be ranked the killing or wounding another in

attempting to apprehend him under a legal warrant; or the dispersing of a tumultuous assembly under the Riot Act. In either of these cases, that act, which would be a crime under other circumstances, is justified by the necessity of the case; it being of the utmost importance in the one to prevent a notorious offender from escaping, and in the other to preserve the public peace.

2. OF PRINCIPALS AND ACCESSORIES.

Persons capable of committing crimes may either be *Principals* or *Accessories*. *A Principal* is he who is the actual perpetrator of the deed; or by being present, is aiding and abetting it. This presence does not mean merely the being within sight or hearing; but such a constructive presence, as to shew that he was a party to the actual robbery, and rendering assistance at the time. *An Accessory* is he who is not the chief actor in the crime, but has something to do with it either *before* or *after* the fact committed. *Before* the fact, as by counselling or procuring another to commit a crime; *after* the fact, as by receiving the stolen goods, or by relieving and assisting the felon. In this last case the accessory must know that the felony has been committed. In treason all accessories are principals, because the same act which makes a man an accessory in a felony, makes him a principal in treason, namely, the imagining and knowing of a conspiracy against the Sovereign. Accessories before the fact

have the same punishment as principals, but accessories after the fact have a less degree of punishment. Receivers of stolen goods may be tried as for a substantive felony, and convicted even though the principal felons have escaped punishment. The distinction between the offences of stealing and receiving is frequently almost imperceptible, and enabled formerly many guilty parties to escape. But by a late statute called Lord Campbell's Act, a charge for stealing and also for receiving the same articles, may be included in one indictment, whereas the charges were formerly obliged to be distinct and separate. A wife cannot be found guilty of receiving stolen goods from her husband, being considered to be under his coercion for this purpose.

In treating of the several species of crimes and misdemeanors, with the punishments annexed to them by the laws of England, you will bear in mind, that all crimes are to be estimated merely according to the mischief which they may produce in civil society; and therefore that those vices constituting a breach of mere absolute duties, though equally crimes in the eye of God, yet inasmuch as they concern man only as an individual, are not the objects of municipal law. There are also some misdemeanors, which have in themselves nothing criminal, but are made unlawful by the positive institutions of the State for public convenience. In enumerating, therefore, the offences which are

cognizable by laws, some of which are against the revealed will of God, others against the law of Nature, and some against neither, we shall consider them all as deriving their particular guilt here punishable from the particular laws of man.

The crimes, therefore, which are punishable by our laws may be divided into three classes:—
1. Offences against God and Religion; 2. Offences against the Law of Nations; and 3. Offences against that social compact, which unites mankind, under certain laws and restraints, for the ends of civil government.

1. OFFENCES AGAINST GOD AND RELIGION.

It is unnecessary in these days to enumerate the various enactments against *Apostates*, *Heretics*, *Non-conformists*, *Protestant Dissenters* of all sects and degrees, and *Papists*; as the proceedings against them, happily long since abolished, were more with a view to incapacitate them from certain privileges in the State, than to inflict actual punishment. Nor need I mention the crimes of *sorcery* and *witchcraft*, against which many severe penalties were by law enacted, but which the good sense and true religion of the present age have utterly annulled.

Blasphemy against God, and contumelious reproaches against the Redeemer, and all profane scoffing at the Holy Scriptures, thus bringing them into contempt, are punishable at Common Law; inasmuch as Christianity is part of the laws

of England. *Profane cursing and swearing, and drunkenness*, are also offences punishable by the statute law, by a summary process before a Justice of the Peace. *Simony*, or the corrupt presentation of any one to an ecclesiastical benefice, is also considered as an offence against religion, as well by reason of the sacredness of the charge, thus profanely bought and sold, as because it is always attended with perjury in the person presented. All kinds of *indecency* and dissolute living, whereby the public morals are outraged, are obnoxious to the penalties of the laws; and lastly, the *profanation* of the Lord's Day, is punishable by the municipal law, as an offence against God and religion, and against that decency and propriety which all countries professing the Christian religion, are bound to encourage and protect.

2. OFFENCES AGAINST THE LAW OF NATIONS.

The law of nations is a system of rules, established by universal consent among the civilized inhabitants of the world, in order to decide all disputes, to regulate all ceremonies, and to ensure the observance of justice and good faith. The principal offences against the law of nations, animadverted on as such by the municipal law of England are,

The Violation of Passports, expressly granted by the Sovereign or her Ambassadors to the subjects of a foreign power in time of mutual war, or the

committing acts of hostilities against such as are in amity or truce with us, and are thus under a general implied safe conduct. The violation of *The Rights of Ambassadors*, consisting principally of the sanctity of their persons, out of deference to those august personages whom they represent, and the privilege of which extends not only to themselves but to their attendants, namely, of exemption from arrest in civil cases. These rights are established by the law of nations, and are recognised by the common law of England. They were further confirmed by an act passed in the reign of Queen Anne (7 Anne, ch. 12), soon after an Ambassador from the Court of Russia had been arrested in his coach (A.D. 1708) for a debt of 50*l.*

We have already discussed (*ante*, p. 56) a question how far the privilege above-mentioned would extend to the foreign Ambassador in criminal cases, but even although his own person should be held sacred, and he should be remitted to that foreign country whose representative he is, there to be dealt with according to the laws, at all events his attendants and domestics would be liable to the same punishment as any other persons: for they enjoy the protection of our laws, and therefore cannot be permitted to break them with impunity. The crime of *piracy*, or robbery on the high seas, is another offence against the universal law of society; and consists in committing those offences at sea, which, if committed on land, would have amounted

to felony. By late acts (7 William 4 & 1 Victoria, ch. 91, extended by 6 & 7 Victoria, ch. 98, sect. 1) the dealing in slaves by any British subject is constituted piracy.

In my next Letter I shall proceed to those offences which more particularly appertain to our own municipal Government; and which will branch out to an extent, far greater than those already enumerated.

Yours, &c.

LETTER XXVI.

PUBLIC WRONGS.

3. OF OFFENCES AGAINST CIVIL SOCIETY.

OFFENCES against civil society are of two kinds:

1. Against the Queen and her Government; and,
2. Against the Commonwealth or Public Polity of the Kingdom.

1. OF OFFENCES AGAINST THE SOVEREIGN AND HER GOVERNMENT.

The highest civil crime, which, as a member of the community, any man can possibly commit, is that which may immediately affect the Person of the Sovereign, her Crown and Dignity. This may amount either to a total renunciation of that allegiance, or at least a criminal neglect of that duty, due from every subject to his Sovereign. By the ancient law the crime of high treason was indeterminate, whereby the creatures of tyrannical Princes had opportunities of creating an abun-

dance of *constructive* treasons; that is, to raise by forced and arbitrary construction, offences into the crime or punishment of treason, which never were suspected to be such. In the reign of Edward III. a statute was passed, defining what offences for the future should be held to be treason; and from this statute, we shall find that all kinds of treasons were formerly comprehended under seven distinct kinds; though some of them are at the present day reduced to felony.

HIGH TREASON.

The first species of Treason is, the *compassing or imagining* the death of the Sovereign, whether King or Queen Regnant, the death of the Queen Consort, or of the eldest son and heir of the Sovereign. In order therefore to commit High Treason, there must be a purpose or design of the mind or will; for an accidental stroke, as in the case of Sir W. Tyrrell, does not come within the construction. But as compassing or imagining is an act of the mind, it cannot come under judicial cognizance unless demonstrated by an open, or *overt* act. In order, therefore, to complete the crime of high treason, there must be a design of an explicit nature, and some act to prove that design. Thus, to provide weapons for the purpose of killing the King or Queen Regnant; to assemble a force for that purpose; or to consult on the means to be employed for the prosecution of it, are sufficient

overt acts of treason. Mere words, however wicked, and punishable as misdemeanors, cannot amount to high treason; nor an unpublished writing, as in the case of Algernon Sydney, who was unjustly convicted of treason for speculative writings found in his closet.

Adultery with the wife of the King, or with the wife of the eldest son and heir of the Sovereign, is another description of high treason.

Levying War against the King or Queen Regnant. This may be done, not only by actual rebellion, but by assembling numbers of the people under pretence of reforming religion, or any abuses in the State, such assembling being not only accompanied by actual force, but by intimidation or threats of violence.

Aiding and assisting the enemies of the Sovereign within the realm; either by giving them intelligence, by sending them arms or provisions, by treacherously surrendering fortified places, and the like. In all these species of treason already enumerated, an overt act is absolutely necessary to bring them within this description of offence, and this overt act must be proved by two witnesses. Where, however, there are two *overt* acts laid in the same indictment, they may be respectively established by *one* witness, provided each act relates to the same treason.

Counterfeiting the Queen's Money. This was formerly high treason, in cases of gold and silver, but is now made felony by several statutes; the

last of which is the 2 William 4, ch. 34, which repeals and consolidates all the previous ones. The punishment is now transportation for life, or for any term not less than seven years; or imprisonment for not more than four years.

Counterfeiting the Queen's Great or Privy Seal. This offence, though still treason, is no longer capital, but punishable by transportation or imprisonment.

Killing the Lord Chancellor, the Lord High Treasurer, and the Judges, during the time they are sitting in their judicial capacity, and therefore representing the majesty of the Sovereign.

The Barons of the Exchequer not being named in the statute, are not within its protection, but by later acts, *viz.* 5 Elizabeth, ch. 18; and 1 William & Mary, ch. 21, it is made treason to kill the Lord Keeper and Commissioners of the Great Seal while performing their judicial duties.

There have been some other treasons created since the statute of Edward 3, and not comprehended in it. One of these related to the clipping and defacing the genuine coin of the kingdom, or in any way altering it, so as to make it pass for a different coin to that, which it was when issued from the Mint. This offence has since been mitigated from treason to felony.

Another treason since created is for the security of the Protestant succession; namely, to secure the crown to the House of Hanover against any attempts of the Pretender and his adherents. The

line of the Pretender, however, is now extinct, and it is therefore needless to refer to the statute.

By a late act (3 & 4 Victoria, ch. 52, sect. 4), in the event of any issue of her present Majesty ascending the throne under the age of eighteen years, it is declared treason in any one who should bring about the marriage of such issue without the assent of whosoever should be Regent at that time, and of both Houses of Parliament.

The punishment of treason is death, with some additional horrors, which the humanity of the present age has entirely abrogated.

OF FELONIES INJURIOUS TO THE QUEEN'S PREROGATIVE.

Felony, in the general acceptation of English law, comprises every species of crime, which occasioned at common law the forfeiture of goods and chattels. Not only such offences as are capital, but others, not punished with death, but which subject the committer of them to forfeitures, come within the name of felony. Larceny, or theft, is a felony; suicide is a felony, because the goods and chattels of a person committing suicide are subject to forfeiture, and he is emphatically called *felo de se*. In most instances, formerly, where a new offence was made a felony, the law implied that it should be punished with death as well as forfeiture; unless the felon prayed benefit of clergy, a privilege which all felons had a right to have once, unless expressly taken away by statute. This privilege of clergy,

which was at first confined to persons in Holy Orders, and was afterwards extended to laymen, upon certain conditions, as, for example, that of being burnt in the hand, and even to Peers without any condition at all, was altogether abolished by 7 & 8 George 4, ch. 28.

The first felony immediately injurious to the Queen's Prerogative is that,

Relative to the Coin. Here the felony consists in counterfeiting, diminishing, altering, or impairing the Queen's gold and silver coin, and in counterfeiting copper coin, in counterfeiting and importing foreign gold or silver coin, and in uttering and tendering base coin, after a previous conviction for the same offence; the first offence of what is called simple uttering, being only a misdemeanor. The having in ones' possession, without lawful excuse, any tools for the purpose of coining, is also a felony.

Embezzling the Public Money or Public Chattels. This is felony, punishable by transportation for fourteen years, by the statute 2 William 4, ch. 4, if committed by any person in the public service of her Majesty, and entrusted with the custody of any money or goods by virtue of such employment.

The Serving Foreign States. This, when done without license from the Sovereign, is inconsistent with the allegiance due to her, and is punishable by many statutes, particularly the 59 George 3, ch. 69, called the Foreign Enlistment Act.

Embezzling Warlike Stores, or destroying, or

attempting to destroy, any of the Queen's ships, arsenals, or magazines. This was formerly a capital felony, but is now punishable by transportation for life by statute 4 George 4, ch. 53.

Desertion and Seducing to Desert from the Queen's armies. These offences are now placed under the authority of Courts Martial by the annual Mutiny Acts. The offence of seducing to desert is also a felony, provided against by various statutes, particularly the 37 George 3, ch. 70, amended by 1 Victoria, ch. 91.

PRÆMUNIRE.

A third species of offence, immediately affecting the Sovereign and her government, though not subject to capital punishment, is that of *Præmunire*, so called from the first words of the writ, preparatory to the prosecution thereof. *Præmunire* is to *cite*, and the person against whom the proceedings are about to be instituted, is cited to answer the contempt of which he stands charged. It derived its origin from the exorbitant power which the Pope claimed in this kingdom, and which even our ancestors could not endure; and therefore the subject-matter of the writ of *Præmunire* and the offence which it was meant to punish, were the paying to Papal process that obedience, which constitutionally belonged to the King alone. In these days, however, the pains of *Præmunire* have been extended to other offences, not originally contemplated, and apply to various minor

offences, chiefly omissions of duty, or contempts of the royal authority. The penalties of *Præmunire* were formerly denounced by a great variety of statutes, but many of these have been repealed, and prosecutions upon such as remain, are now unheard of in our Courts.

MISPRISIONS AND CONTEMPTS,

Affecting the Queen's government. Misprisions are such offences as are under the degree of treason, but bordering thereon.

Misprision of Treason, a term derived from the old French word *mespris*, a neglect or contempt, consists in the bare knowledge and concealment of treason, without any degree of assent thereto ; for if by any act the party should shew himself assenting to it, it would immediately amount to treason. To forge foreign coin, not current in the realm, was formerly Misprision of Treason ; it is now felony ; so was concealment of treasure, belonging to the Queen. In ancient times when our territory frequently changed owners, the discovery of hidden treasure formed a considerable source of revenue to the Sovereign. Hence it was made highly penal to conceal or appropriate it. There are also some misprisions or contempts of the Queen's Prerogative, which are considered high misdemeanors, and punishable as such. These consist in refusing to assist the Queen with advice when called upon, or to join her in repelling an invasion or rebellion ; in speaking against her title and government, in

contempts against her Courts of Justice, and in tumultuous and contemptuous behaviour towards her Judges sitting therein. All these and some other offences are considered misprisions or contempts against the Queen's government, and punished by fine and imprisonment.

Another offence which may be comprised within the present Letter, is one constituted by a late act, *viz.* (5 & 6 Victoria, ch. 51), for the security of the Queen's person. By this statute the wilful discharging or pointing at the person of the Queen of any gun or other arms, whether containing explosive materials or not, or the striking at or attempt to throw any thing upon the Queen's person, or the producing any fire-arms or other arms, or any explosive or dangerous matter near her Majesty's person, with intent in any of these cases to injure or alarm her, are respectively made high misdemeanors, and liable to fine and imprisonment, to which the further punishment of flogging is super-added.

This enactment was rendered necessary in consequence of the violence of some cowardly miscreants, from whom the sex of her Majesty, no less than her august person, held sacred by every loyal subject, ought to have been an ample protection, but in whom a morbid love of notoriety, even though obtained through the medium of crime, seems to have overcome every other feeling of respect or manhood.

Yours, &c.

LETTER XXVII.

PUBLIC WRONGS.

2. OF OFFENCES AGAINST THE COMMONWEALTH OR
PUBLIC POLITY OF THE KINGDOM.

OFFENCES, which more immediately affect the Commonwealth or Public Polity of the Kingdom, are subdivided into such a number of inferior and subordinate classes that it would exceed the limits of these Letters, were I to examine them all minutely, and with any degree of critical accuracy. I shall, therefore, confine myself to general descriptions and definitions of this great variety of offences; and very briefly enumerate under each head, the most important of those crimes and misdemeanors which are the objects of legal enactment.

These crimes and misdemeanors may be divided into those, 1, against *Public Justice*; 2, against the *Public Peace*; 3, against *Public Trade*; 4, against the *Public Health*, and 5, against the *Public Policy* and *Economy of the Country*.

1. OFFENCES AGAINST PUBLIC JUSTICE.

Stealing, Injuring, or Destroying Public Records or other proceedings in a court of Judicature. This is constituted a misdemeanor by the 7 & 8 George 4, ch. 29, sect. 21.

Obstructing the prosecution of lawful Process. Any person opposing the execution of any process, or abusing any officer in his endeavours to execute his duty therein, or preventing the lawful apprehension or detention of any one, is guilty of a misdemeanor, and liable to imprisonment.

Escape is another offence punishable by our law; and is, when an officer negligently or voluntarily suffers his prisoner to escape out of his custody, when arrested on criminal process. When the escape is voluntary, that is wilful, it amounts to the same offence, and is punishable in the same degree, as the offence of which the party escaping was guilty; but the officer cannot be punished until the other has been convicted; before conviction he may, however, be fined and imprisoned as for a misdemeanor.

Breach of prison by the offender himself, if committed for felony, is felony at common law; and punishable with transportation; and if he is confined on any inferior charge, is punishable as a high misdemeanor by fine and imprisonment.

Rescue is the forcibly freeing another from arrest or imprisonment. Where the party rescued is imprisoned or arrested for felony, the rescuing is felony also; where for misdemeanor, the rescuing will be a misdemeanor.

The party rescued, however, must be first convicted of the offence for which he was arrested, before the rescuer can be punished; that is, in cases

of felony; for in misdemeanors he may be tried and convicted as for a substantive misdemeanor, before the indictment of the party rescued.

Returning from transportation before the time that the sentence of transportation has expired, is by the 4 & 5 William 4, ch. 67, made an offence, subjecting the offender to transportation for life. Aiders and abettors thereof are by the same statute rendered liable to the same punishment.

Receiving stolen goods, knowing them to be stolen, is a felony subjecting the receiver, under Lord Campbell's Act, (14 & 15 Victoria, ch. 100), to be indicted as a substantive felon, even before the trial of the principal offender; and as has been before mentioned, the receiver can be charged with the several offences of stealing and receiving stolen goods under two counts in the same indictment.

Compounding a Felony is where the injured person agrees with the felon not to prosecute on receiving a compensation: this offence is punishable by fine and imprisonment.

Conspiracy is an agreement by two or more to indict an innocent man of felony, falsely, and maliciously, who is accordingly indicted and acquitted.

Perjury is a crime, when a lawful oath is administered in some *judicial* proceeding, by one having an authority to administer an oath to a person, and that person thereupon swears wilfully and falsely in a matter *material* to the point in question.

Bribery is where a Judge or other person concerned in the administration of justice, takes any reward to influence his behaviour in his office. An offence now unknown in this country.

Influencing a Jury corruptly by promises, entertainments or rewards. This is called *Embracery*, (qui alienam causum *amplectitur*), and is a misdemeanor equally punishable in the party influencing, and the party influenced.

Analogous to the offence of *Embracery* is that of dissuading or endeavouring to dissuade a witness from attending to give evidence. This is also a misdemeanor at common law.

Maintenance is an unlawful taking in hand, or upholding of quarrels, to the disturbance of the right of another. This offence is forbidden by various statutes, but these are only declaratory of the common law; and it may be either with reference to matters in suit, or to those not in legal controversy. It however is not every interference which will constitute, what is in the eye of the law, *maintenance*; for one may give friendly advice to another, respecting the mode in which he may recover what he alleges to be his just rights; or a master may assist his servant, or a father his son; a counsel or attorney his client; or in case of poverty, one may aid a poor man with money in carrying on his suit, without incurring the penalties of *maintenance*.

Common Barratry, which some have derived from *balestro*, a knave, but of which the better

derivation is *barrateur*, Fr. a deceiver, differs from *maintenance*, inasmuch as it is the *frequent* stirring up of suits and quarrels ; whereas maintenance has reference only to a *single* suit.

Champerty, from two Latin words, signifying a partition of the land, is a species also of *maintenance*, and is an agreement with the plaintiff or defendant in any suit, to find the necessary funds for carrying it on, and if the result is successful, the party whose money it is, is to have either half or some share of the thing sued for.

Negligence of Public Officers, such as Sheriffs, Coroners, and Constables. In notorious cases this offence is punished by forfeiture of office.

Oppression and tyrannical partiality of Judges, Justices, and other Magistrates, in the administration of Justice, and under colour of their office. This offence is either punished by impeachment in Parliament, or by indictment in the Queen's Bench.

Extortion is the last offence against public justice, which I shall mention ; and takes place when, under colour of his office, an officer takes any money that is not due to him. Fine and imprisonment are the punishment for all these offences.

2. OFFENCES AGAINST THE PUBLIC PEACE.

The offences of this class are either actual breaches of the peace, or constructively so, by tending to make others break it. The first of these is,

The Riotous Assembling of twelve or more persons, and their not dispersing after the Riot Act (1 George 1, st. 2, ch. 5) has been read to them by proper authority. The continuation of such unlawful assembly, after a stated time, namely, one hour, formerly subjected the parties to trial for a capital offence, but now by a statute passed in the first year of her present Majesty's reign, renders them liable to transportation for life or for a term of years, or imprisonment with or without hard labour, for any term not exceeding three years.

Sending a threatening Letter to extort money, is a felony of a very grave character, formerly capital, but now punishable with transportation or a long term of imprisonment by the 7 & 8 George 4, ch. 29.

Affrays are the fighting of two or more persons in a public place. They may be suppressed by any person who gives the parties notice of his friendly intention to separate them, but more especially by the Constable or other officer having authority to keep the peace.

Riots, Routs, and unlawful Assemblies. A Riot at common law is a tumultuous disturbance of the public peace by three persons or more, assembled together of their own authority with an intent mutually to assist each other, against any who shall oppose them in the execution of some enterprise of a private nature, and afterwards actually executing the same in a violent and turbulent manner, to the terror of the people, whether the act itself

may have been lawful or unlawful. If the enterprise be of a public nature, as, for example, to throw down *all* turnpike gates, or to throw down *all* enclosures, the above acts will amount to high treason.

A Rout differs from a riot, inasmuch as it is a disturbance of the peace by persons assembled together with an intent to do a thing, which if executed would constitute a *riot*, and actually making some movement towards the execution of it, but leaving it unexecuted.

An unlawful Assembly is, where great numbers of people meet together with such circumstances of terror, as cannot but endanger the public peace, for example, if they come armed with weapons, and complaining of a common grievance, in order to consult respecting the most proper means for the redress of that grievance. And here it is to be observed that it is the circumstance of terror arising from their coming armed which constitutes the unlawfulness of the assembly; for any number of men who think that they have injuries to redress may meet together in a peaceable manner, to consult respecting their grievances.

It is laid down by an old writer on our criminal law that women are punishable as rioters, but that infants are not; but by infants he does not mean those who are legally infants, viz., have not arrived at the age of twenty-one years, but those who are under the age of discretion.

Challenges to fight either by word or letter, or the

being the bearer of a challenge, or the inciting another person to send one, are offences against the public peace. They are misdemeanors, punishable by fine and imprisonment.

Libels signify generally any writings or pictures of an immoral or illegal tendency; but in the sense under which we are now to consider them, are the malicious defamation of any person, especially a magistrate, in order to provoke him to wrath, or expose him to public contempt and ridicule. The direct tendency of these libels is the breach of the public peace, by stirring up the objects of them to revenge, and perhaps to bloodshed. This offence is also a misdemeanor, and its punishment is fine and imprisonment.

In the instances where libels are punished by the English law, *the liberty of the Press* is by no means infringed or violated. The liberty of the press is essential to the nature of every free state; but this consists in laying no *previous* restraint upon publication, and not in freedom from censure for criminal matter when published. Every man has an undoubted right to lay what sentiments he pleases before the public; to forbid this, is to destroy the freedom of the press; but if he publishes what is improper, mischievous, or illegal, he must take the consequences of his own temerity. To punish any dangerous or offensive writings which, when published, shall, on a fair and impartial trial, be adjudged of a pernicious tendency, is necessary for the preservation of peace and good order, of

government, and religion, the only solid foundations of civil liberty. Thus the will of individuals is still left free; the abuse only of this free will is the object of legal punishment.

3. OF OFFENCES AGAINST PUBLIC TRADE.

Smuggling; or the offence of importing goods without paying the duties imposed on them by the regulations of Customs and Excise, when carried on in defiance of the laws, and under an armed force, by persons to the number of three or more, is by the 8 & 9 Victoria, ch. 87, a felony, punishable with transportation or imprisonment. Equally severe penalties are by another section of the same statute (s. 64) inflicted in cases where any person shall, within 100 leagues of the United Kingdom, maliciously shoot at any vessel in her Majesty's service, or at any officer duly employed for the prevention of smuggling, or at any officer of Customs or Excise. By the next section persons to the number of four, found armed or disguised in any way, and having goods liable to forfeiture within five miles of the sea coast, or any navigable river leading to it, are also guilty of felony. The purchasing of smuggled goods, a practice so frequently done by many persons who would start at the bare idea even of a fraud, is in fact a robbery of the public revenue, besides being an encouragement to others to pursue these illicit practices. It is not unusual for persons to boast of their success and adroitness in these im-

moral acts, not considering that they are but one degree removed from actual thieving.

Fraudulent Bankruptcy. This, the policy of our commercial country has found necessary to make a felony. It was formerly a capital offence, but its punishment has been mitigated by the 5 & 6 Victoria, ch. 122. The mutilation, destruction, alteration, or concealment by bankrupts of their books, papers, writings, or securities is by the same statute constituted a misdemeanor.

Usury is an unlawful contract upon the loan of money to receive the same again with exorbitant interest. The rate of interest has varied according to the abundance or scarcity of money. Before the discovery of the South American mines, when every article, either of subsistence or luxury, was much dearer than it is now, the interest upon money lent was very high. In the latter years of the reign of King Henry VIII. it was fixed at 10 per cent.—this rate was confirmed by a statute passed in the thirteenth year of Queen Elizabeth; in the following reign it was reduced to 8 per cent.; and a further reduction of 2 per cent. having taken place during the Commonwealth in 1650, the same reduction to 6 per cent. was re-enacted in the reign of King Charles II.; and lastly, by a statute passed in the twelfth year of Queen Anne it was finally fixed at 5 per cent., which was the legal rate of interest up to a very late period. This, however, did not apply to contracts made in foreign countries, for

upon these interest could be obtained according to the prevailing law in those countries where the contract was made. But a late statute passed in the present reign (2 & 3 Victoria, ch. 37, sect. 1), has abolished the old law respecting Usury in all sums above 10*l*, where an agreement for a higher rate of interest is shewn to have been entered into between the parties. The interest, however, upon money secured by lands and tenements still remains at 5 per cent.; and that is also the legal rate of interest upon sums of money accruing from judgments or decrees in Courts of Law or Equity. Nor are pawnbrokers within the exemptions of the above statute, but the rate of interest which they are allowed to charge upon articles pledged with them is specially provided for by the 39 & 40 George 3, ch. 99, called the Pawnbrokers' Act.

Cheating is another offence against public trade, and is a misdemeanor where, under false pretences, and by the use of false weights and measures, one person defrauds another. It is not, however, every species of fraud and dishonesty in transactions between individuals, which is the subject-matter of an indictment for this offence; in order to constitute cheating, there must be an act affecting the public, such as is public in its nature, calculated to defraud numbers and to deceive the people in general.

Forestalling, Regrating, and Engrossing, were formerly offences against trade, by which illegal mono-

polies were obtained, the markets raised, and an undue advantage obtained over the fair trader. Any act, or words spoken, or the spreading of false intelligence with a view to enhance the price of merchandize, constituted these offences. They are now totally abolished by the 7 & 8 Victoria, ch. 24, sect. 1.

Seducing Artists to leave the country and settle abroad, whereby the benefit of our arts and inventions was given to other countries, was formerly an offence; but this restriction having given way to juster and more enlightened principles of political economy, has been removed by the 5 George 4, ch. 97, and 6 & 7 Victoria, ch. 84.

4. OFFENCES AGAINST PUBLIC HEALTH.

Quarantine is the remedy intended by law to prevent infection from plague or other epidemic distemper: it lasts forty days. Disobedience to the regulations enforcing Quarantine, is provided for by the 6 George 4, ch. 78, by which statute the breach of it punishable with fine and imprisonment.

To prevent the spread of the infectious disease called the small-pox, the practice of vaccination is enforced by two late statutes (3 & 4 Victoria, ch. 29, and 4 & 5 Victoria, ch. 32). By the same acts, inoculation is forbidden to be practised in any part of England or Ireland: and any person inoculating

another with the small-pox, is liable to be convicted summarily before the justices at petty sessions, and to be sentenced to one month's imprisonment.

Selling unwholesome Provisions is an offence punished by fine. The adulteration of wine, bread, corn, or flour, is by several statutes, viz. 1 William & Mary, ch. 39, 3 George 4, ch. 106, and 6 & 7 William 4, ch. 37, made analogous to the offence of cheating, and although indictable as such at common law, is usually made amenable to a fine by summary conviction before a Magistrate.

5. OFFENCES AGAINST THE PUBLIC POLICE AND ECONOMY.

By the public police and economy are meant the due regulation and domestic order of the kingdom; whereby the individuals of the State, like members of a well-governed family, are bound to conform their general behaviour to the rules of propriety, good neighbourhood, and good manners; and to be decent, industrious and inoffensive in their respective stations. This head of offences must, therefore, be very miscellaneous, as it comprises all such crimes as especially affect public society, and are not comprehended under any of the preceding species. Some of these amount to felony, and others are misdemeanors only.

Clandestine Marriages are of the former description, which consist in the solemnizing of any marriage in England (except by special license), in any other place than a church or chapel, where banns have

been usually published, or than a building duly registered under the provisions of the 6 & 7 William 4, ch. 85. This offence is a felony in the parties solemnizing the marriage. There are other stringent provisions respecting marriages, of which the most important are as follows:—To forge or alter any entry respecting any marriage, to forge any marriage license; wilfully to deface, destroy, or injure any register, or wilfully to give any false certificate respecting any marriage, all these are felonies, and subject the offenders to transportation. These provisions not only apply to parish registers, but to the registers made in districts under the authority of the 6 & 7 William 4, ch. 85.

Bigamy is also a felony, liable to be punished by transportation, and is when a man or woman marries, his or her former wife or husband being still alive. The offence, however, is not punishable as a felony, in cases where the first husband and first wife, have been continually absent from each other for seven years, during which time the parties have not respectively heard of each other's being alive. In a trial for bigamy, the first marriage having been proved, the second wife may be a witness against the husband, for she is no longer legally his wife.

Common Nuisances, or such as affect the public, are various; among others is the obstruction of the highways, bridges, or public rivers; the carrying on of manufactures or trades injurious to health; the keeping disorderly houses of all sorts; the throwing fireworks about the streets: the exposing

in the public thoroughfares a person suffering under an infectious disease ; vagrancy, for the suppression whereof, many acts and offences are designated acts of vagrancy by the Legislature, and provided for by express statutes, which it would be unnecessary for me to enumerate ; these and many other nuisances, subject the parties to various penalties and punishments, according to the nature of the offence, and the aggravated degree of it.

The last offence against the public police and economy of the kingdom which I shall mention, is that relating to the *Post Office*. The protection and security of communications through the post, so very extensive in a commercial country like our own, renders severe penalties necessary in the case of offences against this branch of the public service. Two late acts, 7 William 4 and 1 Victoria, ch. 32, and ch. 36, have consolidated all the previous statutes on this subject. By various provisions in them, the opening or detention of a post letter by any one employed under the Post Office, is constituted a misdemeanor : the stealing, secretion, or destruction of a post letter by any person so employed, is felony, punishable with transportation : and if the letter contains money or any chattel, the sentence may be for life. If the stealing of a letter or mail bag from a post office, or from an officer of the Post Office, whether such letter contain money or not, be committed by any individual not employed under the Post Office, it is felony, rendering the offender liable to transportation for life.

By the 31st section of the statute 7 William 4, and 1 Victoria, ch. 36, the wilful detention of a post letter, by any one into whose possession it may have come by mistake, is made a misdemeanor. And lastly, receivers of stolen letters, or the money or articles stolen out of them, may be tried as for a substantive felony, before the conviction of the principal felons, and may be transported beyond the seas for life. In all these cases, the Judge who presides at the trial of a prisoner, may award such term of transportation as he considers the justice of the case demands; and as the statute, 9 & 10 Victoria, ch. 24, sect. 1, now gives the power of imprisoning, for a term not exceeding two years, in all cases where the penalty of transportation exceeds the term of seven years, such imprisonment may in most cases be substituted for transportation, as the latter punishment under the principal Post Office Acts is capable of being inflicted for a very lengthened term.

A letter is deemed to be a post letter from the time it is put into the Post Office; and the words, "*employed under the Post Office*," are always taken in their most comprehensive sense; they not only apply to those persons immediately employed by the governors of the Post Office department, but even a letter carrier, employed by the post master of a country village, to deliver letters to the inhabitants, would be held to come under the description in the act.

Yours, &c.

LETTER XXVIII.

PUBLIC WRONGS.

OF OFFENCES AGAINST INDIVIDUALS.

IN all injuries against individuals, besides the private wrong, which the individual sustains, there is also an offence against the State. Were offences confined to individuals only, and did they affect none but their immediate object, they would fall absolutely under the notion of private wrongs; but as such offences cannot be committed without a violation of the laws of nature, or of the moral as well as political rules of right; without a breach of the public peace, or without danger to civil order and society; it is therefore, that the Government calls upon the offender to submit to public punishment for the public crime. The prosecution of these offences is also on these grounds always at the suit of the Sovereign, in whose person the executory power of the laws, and the representation of the Government, entirely reside.

These crimes and misdemeanors against private subjects, are of three kinds: 1, against their *Persons*; 2, against their *Habitations*, and 3, against their *Properties*.

1. OF OFFENCES AGAINST THE PERSON.

The most important crime that can be committed against the person, is that of taking away life, of which no man can be entitled to deprive himself or another, but in some manner expressly commanded or evidently deducible from the laws of nature and revelation. Homicide, or the killing of any human creature, may be either—1, *justifiable*; 2, *excusable*; or 3, *felonious*.

1. *Justifiable Homicide* has no guilt at all, as it may arise either from some unavoidable *necessity*, without any will, intention, or desire, without any negligence or inadvertence, and therefore without any blame,—as in the case of a public executioner, who puts the sentence of death on a malefactor into execution; or it may be committed for the *advancement* of justice,—as when an officer, in the execution of his office, kills a person that assaults or resists him; or it may be committed for the *prevention* of a crime,—as where a person attempts to rob or murder another, or forcibly to break into his dwelling-house, the death of the assailant will be justifiable. This only applies to robberies committed by force, or when the person assaulted is under bodily fear.

2. *Excusable Homicide* may be committed by

accident, when, in doing some legal act, one man unfortunately kills another; or it may be committed in self-defence upon a sudden affray, when it must appear that there were no other probable means of escaping from the assailant. In both these kinds of homicide the law inflicts no punishment, but the Court directs a verdict of acquittal.

3. *Felonious Homicide*, which is the killing of a human creature without justification or excuse, is either Self-murder, Manslaughter, or Murder. *Self-murder* is considered by our law as a felony in the party committing it, and is the offence of a man deliberately putting an end to his own existence. In order to commit this crime the party must be in his senses at the time, otherwise the same incapacity which would absolve him of a crime against another will save him guiltless of one committed against himself. As no punishment can be inflicted on the self-murderer besides the usual forfeiture of goods and property consequent on all felonies, and as the object of all punishment is the prevention of offences, the law has denied him Christian burial, in order to deter others from committing a crime so repugnant to the laws of God and man. Formerly the suicide was buried in the public highway, with a stake driven through his body, in the hope that the ignominy of this rite would successfully deter others from committing the like offence. But by 4 George 4, ch. 52, coroners are no longer allowed to order the burial

of a *felo de se* to take place in this barbarous way, but they are required to order the body to be interred within twenty-four hours of the inquest in some adjoining burying ground, between the hours of nine and twelve at night. The offence of *Manslaughter* is where, from want of sufficient care in doing what he is lawfully about, as in the case of incautious or furious driving, or where in consequence of a sudden quarrel, and generally in all those acts where there is not previous malice, nor time for the passions to cool, one man causes the death of another. But where the intention is premeditated and deliberate, then the offence of killing another person amounts to murder. The great distinction, therefore, between justifiable or excusable homicide, manslaughter, and murder seems to be this: that in justifiable or excusable homicide there is no malice at all; in manslaughter a sudden and uncontrollable malice only, arising on the instant from heat and passion, and impossible, from the weakness and infirmity of our nature, to be suppressed; and in murder a premeditated malicious intention, actuating and influencing the murderer to take away the life of his fellow creature. According, therefore, to the *absence, existence, and continuance* of malice, will the same act become *justifiable* or *excusable homicide, manslaughter, or murder*. It is *murder* when a person of sound memory and discretion unlawfully kills any human creature in being within the Queen's peace with

malice aforethought, either expressed or implied. It follows from this definition that lunatics and infants under the age of discretion are incapable of committing murder; that the person killed must be unlawfully killed, without warrant or excuse; that he must be a human creature in being, *i. e.* actually born into the world in a living state; that the crime must be perpetrated with malice aforethought, either by an expressed evil design or by an implied malice, which the law will presume according to circumstances, and which is not confined to a particular ill-will to any individual, but is intended to denote an action resulting from a depraved and wicked heart; lastly, that every person within this realm, whether the Queen's subject or not, is under her protection, except where the killing takes place in actual combat in time of war. Analogous to the crime of actual murder is the attempt to take away life, although unsuccessful, either by shooting, stabbing, wounding, strangling, or poisoning; and these by the law are all capital offences.

Mayhem is another offence against the person, and is where any person of malice aforethought, and lying in wait, unlawfully wounds or disfigures the person of another by cutting and maiming him. This crime, formerly capital, is now, by the humaner principles of our law, a felony, rendering the person committing it liable to transportation for different periods, according to the character of the offence.

Abduction, commonly called *Stealing an Heiress*, is the marrying, or taking away and detaining with intent to marry her, against her consent, for the purposes of lucre, any woman interested in any real or personal estate. This offence is a felony punishable with transportation or a long term of imprisonment.

Rape is an offence against the persons of women of a more aggravated character than abduction. It was formerly a capital crime, but is now punishable with transportation.

The less grave offences and misdemeanors against the personal security of the subject, are assaults, batteries, woundings, and false imprisonments. These offences, in addition to the private remedy which the party injured may obtain by a civil action, are also indictable as offences against the Queen's peace, and are punishable by fine and imprisonment, according to the nature and degree of the crime committed.

2. OF OFFENCES AGAINST THE HABITATIONS OF INDIVIDUALS.

There are two offences against the habitations of individuals, *Arson* and *Burglary*, both punishable with death under certain circumstances.

Arson, from the Latin word *ardeo*, to burn, is the malicious and wilful setting fire to the house, out-houses, and premises of another. It must be malicious, as the accidentally setting fire to a house

or premises is only a trespass. The crime of arson may also be committed by setting fire to a person's own premises, if done maliciously to defraud an insurance office.

Burglary, from *burg*, a house, and *laron*, a thief, literally house-theft, is nocturnal housebreaking, and is an offence which derives additional heinousness from its being committed at a time when people are less able, from sleep and darkness, to protect their property from the invasion of others. To constitute a burglary the offence must be committed by night, that is, after the hour of nine in the evening and before the hour of six in the morning. Formerly the definition of night was, when there was not sufficient light to see and distinguish objects; but this was a criterion open to many objections, as the degree of light must necessarily have varied at different seasons of the year, or in different kinds of weather, and therefore the exact time when night is said to commence and terminate has been wisely defined by the Legislature. It must also be in a dwelling-house, or premises adjoining and attached to the dwelling-house. Moreover, it must be by breaking and entering, that is, not merely by force and actual fracture, but by removing any obstacle, however trifling, which has been used as a fastening. The lifting of a latch is sufficient, but where the door or windows are open it cannot be a burglary. The least degree of entering with any part of the body is sufficient, or with any part of the instrument used to assist in

the robbery, as, for example, with a hook introduced to extract goods from the interior of a shop window; and the entry must be committed with an intent to commit a felony, which felonious intent is generally deducible from the circumstance of breaking and entering; but where it is not, the question of intent must be left to the jury.

It is not necessary to constitute burglary that a felony should actually have been committed. The circumstances under which Arson and Burglary are still capital offences are, in the case of Arson, where a dwelling-house is set fire to, some persons being therein; and in that of burglary, where it is accompanied with any violence to the inmates of the house. For the Legislature hath had this respect for the safety and security of the citizen, that it has left the severest penalties known to the law unrepealed in these instances, considering how useless the best precautions are against the ravages of fire, and how easily human life may be sacrificed to the villainous stratagems of the incendiary, or the fiercer and more open violence of the burglar. In ordinary cases, Arson and Burglary are punishable with transportation, or long terms of imprisonment.

3. OF OFFENCES AGAINST THE PROPERTY OF INDIVIDUALS.

Theft, or Larceny, so called from the Latin word *latrocinium*, is of two kinds, simple larceny, which is plain theft unaccompanied by any atrocious

circumstances ; and compound larceny, which also includes in it the aggravation of taking from the house or person.

Simple Larceny is the felonious taking and carrying away of the personal goods of another. The word felonious implies that the taking must be against the will of another ; and although goods may have been delivered to another for any particular purpose, as in the case of letting a horse to hire, of entrusting property to a servant, or to a carrier ; yet if the intention of theft is manifested in the person to whom it has been entrusted, that is, if possession of the property has been obtained, although voluntarily on the part of the owner, with the object of stealing it, such conversion, as it is legally termed, will amount to larceny. There are some nice and somewhat over-refined distinctions as to the exact time in these cases, when the intention to commit theft commences. A distinction of this nature is the following : If I pick up a purse on the highway, not intending at the time to steal it, or not knowing who the owner is, it is no larceny, even although half an hour afterwards, when I hear of an owner, I change my mind and appropriate the contents. But if I intend to appropriate it when I pick it up, knowing the owner, and do so, I am guilty of larceny. These questions turn upon the point whether the first *taking* of the article is felonious or not ; but as the subsequent act in both cases shortly after the finding is the same, namely, the appropriation of the property, to be able to discriminate the original intention of the mind is almost impossible. To constitute theft, there must not only be a felonious

taking, but a carrying away, or as the lawyers call it, an asportation; not merely a touching of the property, but an actual moving of it from the place it occupied; and though that moving be only an inch, yet the law considers the taking completed. At common law, property attached to the realty, as for example, growing corn, apples on a tree, lead, or other metal annexed to buildings, was not the subject of larceny; while to steal corn cut, or apples fallen to the ground, was felony. But to remedy the inconvenience arising from this state of the law, the taking of property annexed to the freehold, or as the lawyers term it, savoring of the realty, has been in certain cases made felony by statute; as for example, the stealing from mines, the taking away any metal or woodwork fixed to buildings, or any fence of whatever material, from the public squares or streets of a town. Under the statute in this last case (7 & 8 George 4, ch. 29, sect. 44), it has been decided that it is felony to steal a tombstone from a churchyard. The punishment for simple larceny is now imprisonment or transportation; the latter only in cases where two summary convictions have taken place under certain Acts of Parliament, or where the larceny has been committed by lodgers, of goods or fixtures in lodging houses above the value of 5*l.*

Larceny was formerly divided into grand larceny where the value of the property stolen was above twelve pence, and petty larceny where the value was twelve pence or under, but these distinctions were abolished by the 7 & 8 George 4, ch. 29.

Compound Larceny is, where, in addition to

simple larceny, the thing stolen is either from the house or person.

Larceny from a dwelling-house in the day time, accompanied with a breaking; stealing from a dwelling-house, some person being therein, and put in bodily fear; stealing in a dwelling-house to the value of 5*l.*; breaking into a shop, warehouse, or counting-house, and stealing therein: breaking a building within the curtilage or fence enclosing the premises of a dwelling-house, and stealing therein; stealing goods from a vessel, either in harbour, or on any navigable river: stealing merchandise from the docks or wharfs, belonging to a port of entry or discharge; all these are specimens of what is called Compound Larceny; and are offences subject to different severities of punishment, whether of transportation or imprisonment, according to the provisions of the statutes under which they become cognizable. Many of these were formerly capital offences.

Larceny from the *Person*, is either by picking a pocket privately, or by open assault and violence, usually called highway or footpad robbery.

To constitute the latter offence, there must be a felonious taking away of money or goods from the person of another, or in his presence against his will, by violence or putting him in fear. 1. It must be a felonious *taking*, for an assault with intent to take any thing, without actually taking it, though it is an offence cognizable by a separate statute, is not in the eye of the law robbery. 2. The thing

taken may either be taken from the actual person of him who is attacked, or it may be taken in his presence against his will. As, for example, if I were to put my watch on the table in a tavern, and a thief putting a pistol to my head, accompanied with threats against my life, were to carry off the watch, this would be robbery. 3. Lastly, the taking may either be with actual violence, or such a putting in fear as would oblige a man of ordinary courage to surrender his property; as by presenting loaded fire-arms at him, or even fire-arms which the party assaulted imagines to be loaded.

The offences of Larceny from the person and of Robbery, are both punishable with transportation, though, of course, in the case of the latter offence, being of a much graver character, a far more lengthened term of transportation is awarded.

Embezzlement, from the old word to *bezzle*, literally to waste or squander in eating and drinking. This is an offence distinct from Larceny in its primary sense, inasmuch as the thing taken is so taken before it has reached the owner's possession, though belonging to him. It is where a clerk, agent, or servant, employed by his master, in the course of his duty to receive money on that master's account, does not account for it when received, but appropriates it to his own use. To constitute embezzlement, there must not only be a bare non-payment of the money by the servant, or clerk, but a denial of the receipt of it either directly, or indirectly, by

making a false entry in his books, in which the payment is either altogether omitted, or a smaller sum entered, than has been received. What constitutes the crime here is the wilful omission, or misrepresentation; as it may often happen, that parties entrusted with money may make a mistake, unintentionally, through carelessness or want of memory.

Embezzlement, though not larceny at common law, in consequence of the thing taken never having been in the possession of the owner, has been made larceny by statute, first by 39 George 3, ch. 85, now repealed; and latterly by 7 & 8 George 4, ch. 29 and 30; at which time the statutes relating to the criminal law were very ably consolidated under the superintendence and direction of the late Sir Robert Peel. It is due, however, to the enlightened Romilly and Mackintosh to say, that they were the authors, and original proposers, of most of these improvements.

Embezzlement is punished with transportation or imprisonment.

Malicious Mischief is another offence against individuals, and like the crime of arson against the habitations of men, so is this against their property. Innumerable Acts of Parliament have at various times been passed, with reference to this subject; but they are now comprised in the 7 & 8 George 4, ch. 30. By different sections of this statute, the breaking down sea-walls, or the banks or locks of

navigable rivers or canals; the destroying or throwing down turnpike gates; the cutting or damaging trees above the value of 1*l.* in parks or pleasure grounds; the destroying hop binds; the breaking or destroying or damaging machinery or goods in process of manufacture; the cutting away looms, or the entering any house or shop for that purpose, are made offences liable to transportation or imprisonment, either as felonies or misdemeanors. In all these cases there need exist no actual malice in the ordinary acceptation of the term against the owner of the property: but the proof of a general malicious intent, arising from a mischievous mind, is all that is required to convict the offender.

By the same statute the malicious destroying or damaging of any trees or shrubs, wherever growing, above the value of one shilling, or of any plants or vegetables growing in any garden, or orchard, renders the perpetrator liable to a summary conviction before a magistrate; who, in the former case, has the power of inflicting a penalty of 5*l.* for the first offence, and imprisonment for the second: and, in the latter instance, can at once, even for the first offence, commit the accused to be imprisoned with hard labour, for any term not exceeding six months.

Forgery, from *fabriciare*, corrupted into *fau-ri-ciare*, to fabricate or invent, *i. e.* wrongfully, is another offence against the property of individuals, and is the fraudulent making and altering a writing to the prejudice of another's rights. So also is the

uttering and disposing of any forged instrument, knowing it to be forged. The gist of the offence here is the guilty knowledge; for any man may innocently receive from another a forged instrument in the course of business, *e. g.* a Bank note, and pass it away, without incurring the penalties of guilt. Even the having in one's possession a forged Bank note or bill of exchange without lawful excuse, and knowing the same to be forged, renders the party possessing it liable to transportation for a felony. In a country like our own, where commerce and trade flourish to so vast an extent, and are mainly based on mercantile credit, it is most important to check by severe penalties the facility which exists of committing forgery or uttering forged notes, and thus to prevent the serious consequences which would ensue from it when committed, to the whole community.

Not unlike the crime of forgery, but of a far less serious character, is that of obtaining money by *false pretences*, which is a misdemeanor punishable with transportation or imprisonment. The false pretences may either consist of writing or speaking. Even an action may constitute a false pretence; for where a person not a member of the University of Oxford went to a shop wearing a student's cap and gown, and obtained goods, although he did not represent himself to be a member of any College, yet his having assumed a costume to which he had no right was held to make him liable as for a false

pretence. So if several go together and are acting in concert, the pretence conveyed by the words of one in the presence of the rest, although they take no ostensible part in the transaction, will support an allegation of false pretences by all. In many cases false pretences are distinguished from larceny by a shade almost imperceptible.

In many of the cases of felony above mentioned intervals of solitary confinement, of a duration limited by statute, are awarded during the term of imprisonment undergone by the felon. The infliction of this additional punishment is wisely left to the discretion of the Judge who passes the sentence of the Court, to be inflicted or not according to the peculiar circumstances of each case. The system of solitary confinement, however powerful may be the arguments used in its favour by those who are desirous of combating in this way the evil effects arising from the contagion of vicious society in gaols, is one which the feelings of humanity cannot commend, and the public policy of which is very questionable. The daily visits of the chaplain of the gaol, with a view to the spiritual welfare of a prisoner, may be thereby rendered more acceptable, and thus the work of his reformation facilitated and promoted. Nevertheless the shutting up from all other intercourse with his fellow men a human being, whose education in most cases has not supplied him with intellectual resources adequate to solace and sup-

port his mind under the weight of solitude, is allowed by concurring medical testimony to produce deleterious effects on the brain, and to have a direct tendency to create insanity. While, on the other hand, the uncertainty of solitary confinement as a punishment prevents it from being taken into calculation by those who deliberate whether they shall commit a crime or not. The fear of detection and disgrace, the apprehension of those moral or temporal evils which ensue from loss of character, and the dread of being deprived of personal liberty, may operate to deter a man from crime; but it may safely be affirmed, that the ideas or anticipations of solitary confinement as a punishment seldom, if ever, present themselves to his mind.

Before I quit this subject, I will mention one branch of our jurisprudence intended for the *prevention* of crime. This is the power of any person who is assaulted, or who is in fear of receiving bodily harm from any one, to require him to enter into recognizances to keep the peace, or for his good behaviour, under a penalty to the Queen, to be forfeited upon a breach of his recognizance. All justices are also empowered by virtue of their office to bind over all persons acting against the peace of the Queen, in whatever way that peace is broken, either by actual violence, or by a disorderly and scandalous life. Generally speaking, the object of all law is to prevent future crimes, rather than to expiate the past; and all punishments may be said to range under one of three classes, as those

which tend to the amendment of the offender, to deprive him of all power to do future mischief, or to deter others by his example. But recognizances to keep the peace, or to be of good behaviour, are intended merely for prevention in the individual himself, as well as for the security of those whom he may injure; they are had recourse to without any crime having been actually perpetrated, but in consequence of a probable suspicion having arisen that some crime is likely to be committed by him.

Among offences against the property of individuals, I must not omit to mention those respecting the Game, although in their consequences, which are frequently most serious, they may be said also to affect the Public Peace.

These have all been created by statute, as they were unknown to the common law of this country. They are provided for by a variety of enactments, and are constituted misdemeanors of a more or less serious character according to the nature of the offence. The most grave of these is where three or more persons, any one of whom is armed with a gun or other offensive weapon, enters by night on any land, either open or enclosed, for the purpose of taking game. A conviction for this offence renders the party liable to be transported for fourteen years, although the Court has now in this and in most other cases a discretionary power of inflicting punishment. The possible severity of it in the present instance arises from the great

danger to life frequently ensuing from conflicts entered into between those whose duty it is to preserve Game on the one side, and those illegally combined for its destruction and appropriation on the other. Night, for the purposes of the act 9 George 4, ch. 69, sect. 9, which awards transportation or a lesser penalty on the above offence, according to the circumstances of the case, is construed to commence at the expiration of the first hour after sunset, and to conclude at the beginning of the last hour before sunrise throughout the year.

I will conclude this Letter with mentioning that by a late statute, 14 & 15 Victoria, ch. 100, sect. 29, the punishment of Hard Labour is added to Imprisonment in certain misdemeanors of a serious character, where there had been previously no power of awarding it. Among the offences liable to this aggravation of punishment are those of cheating, extortion, the obstructing public justice, conspiracy to accuse another falsely, of crimes, escape or rescue from lawful custody on a criminal charge, and assaults occasioning actual bodily harm. In all felonies the punishment of hard labour is invariably inflicted, except in cases where it would be prejudicial to the health of a prisoner. In the case of women and children, the hard labour is of course proportioned to their sex and strength.

Yours, &c.

LETTER XXIX.

PUBLIC WRONGS.

OF COURTS OF A CRIMINAL JURISDICTION.

I WILL now point out to you the several Courts of Criminal Jurisdiction wherein offenders may be prosecuted to punishment, deducing them to you in their natural order, and explaining the proceedings therein.

THE HIGH COURT OF PARLIAMENT

Is the Supreme Court in the kingdom, not only for the making, but for the execution of the laws, by the trial of great offenders in the method of impeachment. The articles of impeachment are, like bills of indictment, presented by the House of Commons, which is the most Solemn Grand Inquest in the Kingdom, to the House of Lords, the Supreme Court of Criminal Jurisdiction, therein to be dealt with and tried. A Commoner, however, cannot be impeached before the Lords for any capital offence, but only for high misdemeanors; whereas a Peer may be impeached for any crime.

THE COURT OF THE LORD HIGH STEWARD

Is a Tribunal instituted for the trial of Peers indicted for treason, misprision of treason, or

felony. When a Peer is indicted for either of these offences, the indictment is removed into this Court, and a Lord High Steward is appointed President for the time. All the Lords of Parliament are summoned to attend the trial, and the decision is given by the majority of votes. These, however, must amount to twelve in order to establish a conviction. If the trial of a Peer takes place during the sitting of Parliament, that is, the Court, wherein the trial is held, although a Lord High Steward is always appointed to regulate and add weight to the proceedings.

THE COURT OF QUEEN'S BENCH

Takes cognizance of all criminal causes, from high treason down to the most trivial misdemeanor or breach of the peace. Into this Court all indictments of inferior Courts may be removed, and either tried at bar, or, as I have before explained to you, at the assizes in the different counties, where a commission of *oyer and terminer* (to hear and determine) and general *gaol delivery* is issued by the Crown to such Judges as are about to preside at the Courts of *Nisi Prius*.

THE HIGH COURT OF ADMIRALTY

Was formerly held before the Lord High Admiral of England or his deputy, styled the Judge of the Admiralty, and some of the Common Law Judges joined with him in the commission for the trial of offences and crimes,

committed either on the sea or on the coasts out of the extent of any English county. A special commission, however, as required by 28 Henry 8, ch. 15, is no longer necessary; the justices of assize, oyer and terminer, and general gaol delivery, having now by a late statute (7 & 8 Victoria, ch. 2), the power to try these offences, as have also the Judges who preside at the Central Criminal Court: with these last, the Judge of the Admiralty Court is associated. The trial is usually held in the county, wherein the party accused is taken into custody; or if the crime has been committed on ship board, in that county where the ship first arrives from the high seas.

THE COURTS OF OYER AND TERMINER, AND
GENERAL GAOL DELIVERY,

Are held twice every year in each county in the kingdom, except in the populous counties of Lancashire and Yorkshire, where they have been held of late years three times: and in Middlesex, where they are held eight times a year: the Queen's commission being directed to the Judges and others therein named to *inquire, hear, and determine*, all treasons, felonies, and misdemeanors. These courts are known by the general name of the Assizes, whereat, as I have explained to you in a former Letter (p. 166), is included the trial of civil causes at *Nisi Prius*, and also of all criminal matters under this commission of Oyer and Terminer, and general Gaol Delivery. The proceedings in the Central

Criminal Court I have already detailed to you (p. 172).

THE COURTS OF GENERAL QUARTER SESSIONS

Are held four times a year in every county, except in Middlesex, which is specially provided for by 7 & 8 Victoria, ch. 21, and are composed of all the acting justices of the peace, with a chairman and deputy chairman, chosen by themselves out of their own body, who respectively preside in two courts. The proceedings therein must be before two justices at the least. The duty of the Quarter Sessions is to hear all appeals, in matters relating to the poor rates, and other orders and convictions imposed by the justices out of sessions, wherein the laws have allowed an appeal. Besides much other business of a local nature, they have the power of trying all felonies and misdemeanors, for which the punishment is a limited transportation, fine or imprisonment; or which are not specified in the 5 & 6 Victoria, ch. 38, whereby the jurisdiction of the Sessions is limited and defined; they have also the direction and control of all the county expenses relating to bridges, gaols, and houses of correction, as well as the management of all matters of a public and local nature in the several counties.

THE BOROUGH COURTS.

These are held also four times every year in boroughs, before the mayor and other magistrates, under the provisions of the Municipal Corporation

Act, (5 & 6 William 4, ch. 76), and are presided over by the Recorder, who is the sole Judge. These Courts have cognizance of appeals in matters relating to the poor, arising within the borough; and also of the same crimes and misdemeanors, which the magistrates at Quarter Sessions are empowered to try.

THE COURT OF THE CORONER

Is also a Court of Record, established to inquire into the causes of sudden or violent death. The effect of a Coroner's inquisition, if the verdict be one of wilful murder, is equivalent to an indictment found by a grand jury, as it is sufficient to put the accused person on his trial. The proceedings are before a Jury of twelve at the least, who are sworn and charged with the case by the Coroner. If there are more than twelve, twelve at least must agree in their verdict. There must be always a body found to justify the inquiry, except in cases where a special commission is issued. The Court is usually held as near as possible to the place where the body is found, in order that it may be viewed by the jury.

PROCEEDINGS IN COURTS OF CRIMINAL JURIS- DICTION.

The proceedings in Courts of Criminal Jurisdiction, are either summary or regular.

1. *A summary proceeding*, is where an information is laid before one or more justice of the peace,

and certain penalties, either of fine or imprisonment, as directed by the Act of Parliament under which the information is laid, are inflicted upon conviction of the offender.

2. *A regular proceeding* in a Court of Criminal Jurisdiction is the trial of an offender before a judge and a jury of his country ; and, as I have before given you a description of a trial in a civil action, I will now briefly describe to you the proceedings in a criminal prosecution.

An offender charged with having committed a felony, may be arrested by any person without a warrant, at the time the felony is in the act of being committed ; and, indeed, if there is probable ground of suspicion, any constable may arrest him without any warrant or authority, besides that which his office as conservator of the peace gives him. The safest and the best way however, is, for an information on oath to be laid before a justice of the peace, of the offence committed, and of the party suspected ; when a warrant is issued by the justice for his apprehension. Upon the accused being brought before the justice, proofs on oath, sufficient to put the offender upon his trial, to answer the charge, are required ; which, if satisfactory to the justice, and not negatived by the prisoner, the warrant of commitment to gaol, is made out and signed, and the accused is sent to prison to take his trial at the next gaol delivery. In some cases the magistrate takes a prisoner's own and other sufficient bail for his appearance at his trial, till which time he is allowed to go at

large. If, however, the offence is of such a nature as is not cognizable by the Quarter Sessions, in that case he must be committed to the ensuing Assizes, which, in many cases, may not occur for several months.

On the day of trial, the indictment, specifying and charging him with the offence, is laid before the grand jury, which consists of a certain number of the first gentlemen of the county; these examine the witnesses on oath, and determine, if there is sufficient ground, to call upon the accused to answer the complaint. If they think there is not, they write on the back of the bill of indictment, *No Bill*, and the accused is discharged. But if they think there is sufficient proof to put him upon his trial for the crime alleged, they return the bill into Court, with the words, *True Bill*, written on it. A grand jury, therefore, is to determine, whether the prisoner ought to be made to answer the charge, and the petit jury, before whom he is to be tried, is to hear that answer, and bring in their verdict accordingly.

The institution of Grand Juries has been complained of as a useless and cumbersome appendage, calculated to embarrass and delay the administration of justice, but without sufficient reason. The Grand Jury, comprised of gentlemen of the highest honour, education, and position in each county, and thus contributing to the dignity of the Court, form a screen between a prisoner on the one hand, and the uncontrolled will of a single magistrate on the other, who has the power in most cases of

drawing his own conclusion from evidence brought before him, and of committing the prisoner to take his trial. This authority, justly and impartially exercised, as it is almost invariably, is thus subject to the wholesome check imposed upon it by the supervision of other magistrates of the same county as the committing justice, who examine whether the grounds of the committal are such as to authorize the accused to incur the exposure and disgrace necessarily attaching even to the most innocent, in the event of a public trial. Thus admirably guarded are the life and liberty of the subject, not only from actual danger, but even from the risk of it.

When the offender is to be tried, he is brought to the bar of the Court, and the indictment or accusation is read over to him. He is then called upon to plead, either guilty, or not guilty. If the former, he has subjected himself to the same penalty of the law as if he had been found guilty by a verdict given against him. But if he pleads the plea of not guilty, which does not mean that he is innocent, but that he calls upon his accuser to prove the accusation, then the jury are sworn "to try the issue between the Queen and the prisoner at the bar, and a true verdict give according to the evidence." In the event of his declining to plead, a plea of not guilty is entered for him by the officer of the Court. If the prisoner objects to any of the jury for partiality or any other cause, he has a right to do so before they are sworn, and another jurymen will be called in his place. The trial then pro-

ceeds. If it is for treason, or any heinous charge, if the Attorney General conducts the case, or if the prisoner is defended by counsel, the Attorney General or counsel for the Crown opens the proceedings, states the case, and calls the witnesses to prove it. In common felonies, however, where the prisoner is undefended, the case is not opened by counsel, but after the indictment is read, the counsel for the prosecution proceeds immediately to call the witnesses. The prisoner is at liberty either by himself, or his counsel, to cross-examine the witnesses against him, and when the case for the prosecution is closed, to make his defence. If he is defended by counsel he cannot himself examine any witnesses in his defence; but his counsel first addresses the jury, and then calls his witnesses to establish what he has said. Formerly a prisoner's counsel could not, in cases of felony, address the jury on behalf of his client, but this has been remedied by the Prisoners' Counsel Act, 6 & 7 William 4, ch. 114; and counsel can now not only examine and cross-examine the witnesses, which he was permitted to do formerly, but may also address the jury on all points. The Judge, on the close of the defence, or where the counsel for the prosecution has replied, after that reply, sums up the facts proved to the jury, making such remarks on the law, or on those facts, as he may think necessary. The jury then consider their verdict. If there is any difficulty they may retire to consult; but generally, after a short deliberation among themselves in Court, they return their verdict. If that

verdict is one of not guilty, the prisoner is discharged; sometimes immediately, but usually at the end of the Sessions or Assizes, during which he is brought up for trial. But, if the verdict is one of guilty, the Judge then passes the sentence of the law; where he has a discretionary power as to the extent of the punishment, he may exercise it at the time; but where the offence is capital, he either orders the punishment of death to be recorded, in which case it is always understood that the extreme sentence of the law will not be carried into effect, or he leaves the condemned prisoner for execution; or otherwise he reprieves him before leaving the Assize Town, preparatory to the Queen's pardon being granted, which is either total, or upon condition, that he suffer some minor punishment in its place.

The advantages of this open trial to the prisoner before a jury of his countrymen, taken promiscuously from a number returned by the Sheriff, and alone having to decide upon the facts, by which he is either to be acquitted or condemned, are incalculable, and justly the pride and glory of our English laws. In addition to this the prisoner has other advantages, by which, though they do not alter or affect the truth of the accusation, yet upon general principles of jurisprudence, he is allowed to profit; although a late act (14 & 15 Victoria, ch. 100, commonly called Lord Campbell's act), has very wisely done away with most of the technical points from which a prisoner formerly derived benefit; yet even now any mistake in the indictment, material

to the merits of his case, that is, which if corrected would prejudice him in his defence, vitiates the whole proceedings, and he is entitled to an immediate acquittal ; it being of infinitely more consequence that the laws should be administered according to fixed and undeviating rules of evidence, and thus ten guilty men escape, than that by an uncertain and vacillating administration of justice, one innocent man should suffer.

Thus I have cursorily described to you, the proceedings in our criminal court ; and you will, I think, acknowledge, however dreadful it may be for you to know, that many of our fellow creatures are daily standing at our criminal bar to answer for offences, which the temptations of the world, bad education, bad example, and bad associates, are constantly inducing them to commit, yet that in the prosecution of those offences human wisdom, justice, and mercy are admirably tempered and blended together, and that no system could be devised more humane and efficacious than our own, to regulate and put in force the necessary penalties of the law. Nevertheless, I cannot conclude this Letter without pointing out to you, what I consider a slight defect in the constitution of our Criminal Courts. This is the want of any regular judicial tribunal, analogous to the Court of Cassation in France, wherein the sentence passed upon the prisoner may be reconsidered, and revoked in the event of justice requiring it. At present this most important matter is vested in the discretion of a single functionary, the Secretary of State for the

Home Department, who derives his knowledge of the facts from the notes of the Judge having presided at the trial. This state of things might be remedied without any great difficulty. When special Acts of Parliament are passed, and very properly so, to deprive a prisoner of many technical advantages, totally independent of the actual truth or falsehood of the charge against him, but which he has long possessed, it is doubly incumbent on the Legislature to shield him against every possibility of injustice, and examine, if he is not prejudiced by any latent defect of the law. At present if any *legal* point arises upon a prisoner's trial, it is reserved by the presiding Judge for consideration in the Court of Criminal Appeal, the jurisdiction of which I explained to you in a former Letter. It is much to be desired, that this jurisdiction should be enlarged and extended to matters of *fact*, where fresh evidence transpires, tending to give a different complexion to the proofs adduced at the trial, or where the jury have drawn an inference from facts already established manifestly incorrect. If these circumstances form ground for a reconsideration of the case in civil causes, how much more ought they to do so in criminal matters, where the lives and liberties of men are in jeopardy, and where, if the verdict of a jury works injustice, it can only be effaced by the interference of the Executive, either through the medium of a Pardon, or of directions given to the Authorities to forbear carrying the sentence of the Court into effect.

Yours, &c.

LETTER XXX.

OF THE LAW OF EVIDENCE.

THERE is one subject connected with the proceedings in Courts of law which Blackstone has only very briefly treated of, but upon which a few general remarks will, I think, be interesting to you. It is that of the Law of Evidence, as applicable both to civil causes and the Criminal Code.

Evidence is *proof by testimony*, and is so called because the point at issue is thereby to be made *evident* to the jury.

Evidence is of two kinds: 1, *Parol* or *verbal*; and 2, *Written*. Again it is subdivided into: 1, *Primary*; and 2, *Secondary*. Lastly, it is further divided into: 1, *Positive*; and 2, *Circumstantial*.

It would be impossible for me within the compass of a single Letter to embrace, in its minute and infinite details, a subject so important and comprehensive as the Law of Evidence; it is a

branch of professional study upon which the most able treatises have been written. It will be sufficient for me to make a few comments—first, upon *parol* and *written* evidence; secondly, upon *primary* and *secondary* evidence; and thirdly, upon *positive* and *circumstantial* evidence.

1. PAROL AND WRITTEN EVIDENCE.

Parol or *verbal* evidence is proof by oral testimony of witnesses sworn to speak the truth.

It is an established rule, that every one who gives evidence in a Court of Justice is required to take an oath, which is a solemn appeal to the Divine Being, that what he is about to assert is the truth. The few cases, where an affirmation is allowed to be substituted for an oath, form the exceptions to this rule. The oath is such as the individual about to give evidence considers binding on his conscience. The Christian is sworn upon the Gospels of our Holy Faith—the Jew upon the Old Testament—the Mahomedan upon the Koran—and the Hindoo or Brahmin according to the code of his peculiar caste or sect.

A Peer of the realm is always sworn in a Court of Justice, although in his own seat in the House of Lords, when constituting one of a judicial tribunal, he gives judgment always upon his honour. Even the testimony of the Sovereign is inadmissible, except upon oath: of such vast importance do the laws of the realm consider it, that a witness should

publicly, in open Court, maintain what he asserts by his own presence, and in his own person, and that the party against whom the proceedings are instituted, should have the opportunity of cross-examination.

It follows from what has been said, that whoever does not understand the nature of an oath, either from defect or immaturity of intellect, cannot be admitted to give evidence.

An idiot is incompetent to be a witness; so is a lunatic, except in lucid intervals; when if it is shewn that he has sufficiently recovered his understanding, he is admissible. Children are excluded from giving testimony, not at any particular age, but according to the degree of intelligence to which they have attained, and the share of religious instruction they have received. They are always sworn, where admissible. Sometimes when they are found to have a very imperfect knowledge of the nature of an oath, the trial has been postponed, for the purpose of further instruction being imparted to them; but an application of this nature ought to be made before a child is examined by the grand jury, and before the trial of a prisoner has commenced; moreover, testimony given afterwards, under such circumstances, ought certainly to be supported and corroborated by other evidence.

Certain crimes disqualify a witness from giving testimony; but as this disqualification ceases, when the punishment for the offence has been suffered,

except in cases of perjury, I need not further allude to them.

An accomplice is a competent witness against any person accused of an offence, although the value of his statements, and the degree of credit they are entitled to, is a question for the jury to consider; and it is an established rule that his testimony must be confirmed in some material point, for a Judge will always direct the jury to acquit the prisoner, where his assertion of a fact stands alone and unsupported. When two or more prisoners are tried upon a joint indictment, and one has pleaded guilty to the charge, he may be a witness against the others.

The mutual relation of parties does not exclude them from giving evidence for or against each other, except in the instance of husband and wife. A father may give evidence against his daughter, a daughter or son against their father, a brother against his sister, a servant against his master. But a husband and wife being considered one in law, a privilege denied to all others, is extended to them, and a wife is not compellable to give evidence against her husband in any civil suit, nor in any felony or misdemeanor, not even in high Treason. But the same rule which shields parties so related from the danger of having facts exposed and elicited, where the intimacy of the relation necessarily causes communications to be free, confidential, and unguarded, also prevents an accused party from

having evidence given in his favour, where sometimes that very intimate relation has furnished the wife with some material and secret fact, which no other individual could have the same opportunity of becoming cognizant of.

An exception, however, to the above rule, is made in favour of the wife, where she brings forward any charge against her husband affecting her liberty or injuries done to her person, in which case the law allows her to be a witness against him. In a charge of bigamy too, as I have already mentioned to you, where a man's first marriage has been satisfactorily proved, the woman whom he has subsequently married, during the life of the first wife, may be called as a witness against him to establish the fact of the second marriage.

Formerly, the parties to a suit, whether as plaintiffs or defendants, were disqualified from giving testimony in it, as having a direct interest in the result of the proceedings, but a late statute (14 & 15 Victoria, ch. 99) has rendered them competent, whether to the furtherance of real justice, is a question much discussed, and not yet settled by the Profession.

Written Evidence is proof by testimony of written documents or records. The highest kind of written documents are Acts of Parliament, public and private. In the former case, the printed statute is evidence of the document originally passed by the Legislature; in the latter, a copy of the private

act, purporting to be printed by the Queen's printer, is evidence of its contents in all Courts without further proof.

Records and Judgments are proved either by the original documents or by examined copies. It is a general rule that where any document is of a public nature, and admissible, it may also be proved by an examined copy: of this nature are copies of Court Rolls, adduced to prove the title of a copyholder; entries in public books, as for example, in Corporation Books; entries in Parish Registers, of Baptisms, Marriages, or Burials. When a deed or conveyance is adduced in evidence, its execution is proved by one of the attesting witnesses. After thirty years a deed proves itself, and proof of its execution is dispensed with; but some evidence ought to be given of the place from which it has come. Depositions are written statements made upon oath before a Magistrate, and when produced in evidence, in consequence of the death of the parties who made them, are admissible upon proof, that the prisoner was present, and might have cross-examined the deponents; also that the depositions were read over to him, and signed by the Magistrate, before whom they were taken, and who also must have been duly qualified to act.

2. PRIMARY AND SECONDARY EVIDENCE.

Primary Evidence is where the best and most direct testimony of any fact is given: and *Secondary*

Evidence is where, in the unavoidable absence of the best and highest testimony satisfactorily accounted for, testimony of an inferior degree and less direct is admitted. For example, if the contents of a deed are to be proved, the deed itself is the primary and best evidence of those contents: but if the deed be satisfactorily proved to have been lost, then a counterpart, if there is one, or a copy of the deed may be received in evidence.

So where a deed is in the possession of an opponent, the party desirous of having its contents proved, may on giving notice to the adverse party to produce it, and on their refusal to do so, give a copy of it in evidence. In the case however, of the copy of a deed being adduced as secondary evidence, the attesting witness need not be called.

The principle upon which the best or *primary* evidence is required in all cases, is founded upon the presumption that there is something in the better and higher evidence when withheld, which would weigh against the party withholding it. Therefore, as in the above case, where an opponent refuses to produce a document, he is not allowed to take advantage of his own wrong; and although the deed is not absolutely lost, the rule is relaxed, in order that the party requiring its production may have justice. On the principle already laid down, *oral* evidence cannot be substituted for a *written* document, for what is *written* is presumed to be done so with full consideration and solemnity,

and therefore entitled to a greater degree of weight than what is *said*.

3. POSITIVE AND CIRCUMSTANTIAL EVIDENCE.

Analogous to the division of evidence into *primary* and *secondary*, is the division of it into *positive* evidence, where actual proof of a fact is given; as, for example, that a person saw another commit a theft; or *circumstantial*, where a chain of circumstances is adduced, so linked together, that although nobody saw the theft committed, yet the conclusion is irresistibly forced upon the mind, that it was so committed, and by the particular individual charged with the offence.

Of *positive proof* little needs be said. If the witnesses speak the truth it is doubtless the most satisfactory mode of establishing a fact sought to be proved: but the direct and positive assertion of a fact is more easily fabricated, and the falsehood of it exposed with greater difficulty, than where various circumstances, each bearing upon the point at issue, though less directly, are established by the testimony of many persons agreeing together in minute and independent details, all tending to the same conclusion.

Such testimony, therefore, exceeds positive evidence in this respect, namely, that it is more difficult to invent, while any inconsistencies or variances are more readily detected. It must be remembered

however, that circumstantial evidence ought to exclude every other hypothesis than the one suggested by those who rely upon it; and therefore a conclusion should never be allowed to stand upon it without the greatest caution and deliberation.

Similar to circumstantial evidence, but distinguishable from it, is what is termed *presumptive* evidence, where the mind infers or presumes from some facts which are known, others which are not known. Presumption is an act of reasoning, and founded on certain premises, which ought to warrant the conclusion. The inference arising from the possession of stolen property may exemplify presumptive evidence, which is stronger or weaker according to circumstances, as for instance, according to the length or shortness of time since the property was lost.

In cases of circumstantial evidence the chain of circumstances is seldom so perfect, as that some break in it is not filled up by presumption.

Presumption may exist where the evidence is not at all circumstantial; in fact it may be rebutted by circumstances; as, for instance, where guilt is presumed from the conduct, demeanor, and expressions of an accused person; or where injuries are done by one person to another; in the last case malice is presumed, but it is open to contradiction by evidence, either direct or circumstantial.

What is called *prima facie* evidence, is also presumptive testimony of a slight character, where the

facts, even if uncontradicted, would scarcely warrant the conclusion sought to be drawn from the premises.

There is also another description of evidence, which I will mention before I conclude my Letter, and which is what is called *hearsay* evidence. This, as a general rule, is inadmissible. Any one giving evidence may state what he has *seen*, which is a fact resting upon his own oath and his own veracity; but he may not state what he has heard *said*; for the person who spoke to him, even although the words spoken may relate to the subject on which he is giving evidence, spoke in the absence of the party to whom they relate, and spoke without the solemnity of an oath, consequently what he said may or may not be true. But if the person to whom the words spoken related was by, and had the opportunity of contradicting them, but did not, then the person who heard what was said, may give it in evidence, for the silence of the party to whom the words related, is construed into an admission, that they were true.

In some cases, however, there is an exception to the general rule, that *hearsay* evidence is inadmissible. In questions of pedigree, declarations of deceased members of a family are admissible to prove it: but they are excluded when made after any suit has commenced, or any controversy has arisen upon the point at issue.

Hearsay or reputation is also admissible to prove certain public or general rights, as a manorial

custom, the boundaries of a parish, or the right of its inhabitants to the use of a particular common.

There are also other cases where the Courts receive hearsay evidence. Where the declarations of persons have been made by them against their own interest, or were made by those who, when they made them, had no interest to misrepresent; as, for example, in the discharge of an official duty; in this case, the declarations, although in the nature of hearsay evidence, are admissible after the deaths of the parties who made them.

I have thus given you a brief and general outline of the Law of Evidence, which gives rise to more argument and discussion than any other subject in our Courts of Justice; but of which the principles are very intelligible, and in the highest degree sound and just. Every one is liable at any time to be called as a witness of transactions which may occur in his presence, and without his concurrence or assent in his daily walk through life: and it is exceedingly useful for us all to be acquainted with some of those rules, which if remembered, will enable us in the event of our being summoned to give evidence, to state facts within our knowledge, in a manner calculated to convey to the minds of all present, a clear impression of the accuracy of our testimony, without our weakening or confusing it by an attempt to introduce into it matter irrelevant or inadmissible.

Yours, &c.

LETTER XXXI.

OF THE RISE, PROGRESS AND GRADUAL
IMPROVEMENT OF THE LAWS OF ENGLAND.

HAVING in my preceding Letters given you a short and summary account of the Laws of England, as regards the Rights of Persons, and the Rights of Things; and also having explained to you the Wrongs which affect mankind either in their private capacity as individuals, or in their public character as citizens; I will now recal to your memory some of the principal outlines of the legal Constitution of this country, by a short historical review of the most considerable revolutions that have taken place in the Laws of England from the earliest to the present times; and in doing so, I will divide the narrative of our legal polity into five distinct periods, each memorable for some important change in the administration of the law, as well as for its improvement.

1. FROM THE EARLIEST TIMES TO THE NORMAN CONQUEST.

In what state our legal polity was from the
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earliest times to the reign of King Alfred, is a matter of great uncertainty, and therefore our inquiries in that direction must be very fruitless and defective; but when the government of the whole country was vested in Alfred, as sole monarch of all the petty states, up to that time under the dominion of distinct Rulers, he new-modelled the Constitution, and rebuilt it on a plan which has been strengthened rather than weakened by time. To him we are indebted for the reduction of the kingdom, under one regular and gradual subordination of government; for the subdivision of England into tithings and hundreds, all under the influence and administration of one supreme Magistrate, the Sovereign; and also for having collected the various customs which were dispersed throughout the realm into a digested shape, and into one uniform code of laws. The Danish Conquest, which introduced new customs, was a severe blow to the noble fabric erected by Alfred; but a plan so well concerted, could not be long thrown aside. Soon after the expulsion of the Danes, the English returned to their ancient laws, adopting, however, a few of the customs which the Danes had left behind them; these went by the name of *Dane Lage*, while the code compiled by Alfred was called *West Saxon Lage*, and the ancient kingdom of Mercia, adjoining Wales, had its own Constitutions, called *Mercen Lage*. These three distinct codes of laws were afterwards

consolidated by Edward the Confessor, who, however, only completed a work which his grandfather Edgar had begun, into one uniform digest to be observed throughout the Kingdom; the code of Alfred being the groundwork of the whole, and such of the Mercian and Danish Laws as were approved and suitable to the character of the English, being incorporated into it. This, as far as we can conjecture, for certainty is not to be expected in a matter of such antiquity, appears to have been the origin of that admirable system of maxims and unwritten customs, now known by the name of the Common Law, extending its authority universally throughout the realm, and doubtless, principally, if not altogether, of Saxon parentage. Among the most important of the Saxon laws, may be reckoned the general assemblies of the principal men in the nation, called the Wittenagemote, the origin of our present Parliament; the election of their subordinate Magistrates by the people, as for example, of the Coroners, and Portreeves, since changed into Mayors and Bailiffs; the institution of County Courts, where the Bishop and Sheriff used to exercise concurrent jurisdiction, and these were for the trial of all causes, except those of weight and importance, which were heard before the Sovereign in person; the descent of lands equally to all the males, instead of to the eldest son alone, a law which was afterwards altered at the Norman Conquest, when the right of primogeniture was

introduced; the descent of the Crown, when once hereditary, which proceeded on a principle contrary to the foregoing, but whereof dear bought experience of the evils attendant upon an elective Monarchy, very early induced the necessity and convenience; and last though not least the Palladium of our liberties, the Trial by Jury.

2. FROM THE NORMAN CONQUEST TO THE REIGN OF EDWARD III.

Among the first of the alterations which took place in our laws, at the Conquest, may be mentioned the separation of the Ecclesiastical Courts from the civil, effected by the Conqueror, in order to ingratiate himself with the Popish Clergy, whom he considered it absolutely necessary to gain over to his own interests. This was the more easily accomplished, because he had taken care to fill all the Episcopal Sees with Norman and Italian prelates.

Another violation of the law was the depopulation of whole districts, for the purpose of their being converted into forests, for the King's diversion of hunting, and the subjecting the people to the unreasonable severities of the Forest Laws, whereby the slaughter of a beast was made equivalent to the death of a man. In the Saxon times though no man was allowed to kill or chase the King's deer, yet he might start any game, pursue, and kill it upon his own estate. But these new constitutions vested the property of all the game in England in the King alone; and

no man was allowed to disturb it without express license from him. This was given by the grant of a chase or free warren, franchises bestowed as much for the purpose of reconciling powerful subjects to these new encroachments, as for that of encouraging them to preserve the breed of game. Another great alteration was effected by regulations, narrowing the remedial influence of the County Courts, the great seats of Saxon Justice, and by the creation of a Court called the *Aula Regis*, with unbounded power and uncontrolled authority. The constitution of this Court as it had been imported from the Duchy of Normandy, was accompanied by many of the customs belonging to the place whence it was introduced: among others by that of pleading in Norman French, although the writs and records were in Latin, as it appears that they had continued to be from the time of the Romans. This custom, however unpalatable to the English, took fast hold of the Courts of Law, notwithstanding the efforts of Edward III. to eradicate it. Even to our own time the disadvantages, the subtleties and chicanery of Norman jurisprudence, which in those early periods were substituted for the simplicity of the County Courts, have still remained, until at last, in the middle of the nineteenth century, public indignation, and the reestablishment of more accessible and intelligent tribunals threaten their extinction.

Another innovation was the introduction of the Trial by Combat, for the decision of civil and crimi-

nal cases ; this was the immemorial practice of all the Northern Nations ; it had its rise among the Burgundi about the close of the fifth century, and passed from them to the Franks and Normans, among whom it was held in high repute as a mode of trial, being consonant to the feelings of a chivalrous and warlike Nation. The absurdity of such a trial as a mode of deciding questions of right or wrong, innocence or guilt, caused it to disappear, as soon as a more enlightened Christianity and its attendant civilization, were diffused among the people. But the most important of all the changes, introduced at the Conquest, was the introduction of the Feudal Tenures, which drew after them a numerous and oppressive train of servile appendages. The laws too, as well as the prayers, were then administered in an unknown tongue ; and above all, every body was obliged to return home, and to extinguish fire and candle at the sound of the melancholy *Curfew*. Some things, however, were done in the reign of Henry I. to ameliorate the condition of the people. He abolished the Curfew, he compiled a body of laws for the regulation of the County Courts, which still goes by his name ; he gave up to the Clergy the free election of their Bishops and Mitred Abbots ; and he united once more the Civil and Ecclesiastical Courts, which the influence of the Norman Clergy had caused to be separated. Nevertheless, this union was afterwards again dissolved through the intrigues of the same

clergy, and it was at that second dissolution that the cognizance of wills seems to have been given to the Ecclesiastical Courts.

From the reign of Stephen we may date the introduction of the Roman Civil and Canon Laws into this Kingdom; and during the civil wars, that then occurred, the Court of Rome made great advances in the usurpation of authority over ecclesiastical matters in England; it was at this time that appeals to the Holy See, which had been hitherto strictly prohibited by our laws, became common in every ecclesiastical controversy. But in the reign of King Henry II. many important measures were introduced, not only affecting the general administration of justice, but tending greatly to check the power and encroachments of the Pope and his Clergy. Among these were the Constitutions of the Parliament at Clarendon, A.D. 1164, the institution of justices in eyre (in itinere, upon a journey), the King having divided the Kingdom into six circuits, and commissioned these justices, to try writs of assize in the several counties. Before this time causes had either been tried in the County Courts, or before the justiciaries of the Aula Regis or King's Court, who travelled about with the Royal Person, and occasioned great delay and expense to the suitors. The introduction of escuage, or pecuniary commutation for personal military service also afforded considerable relief to the subject. This

fine was the origin of the subsidies or grants made to the Court by Parliament afterwards, and of the land tax in later times.

King Richard I. was a brave and magnanimous prince, but he enforced the Forest Laws with great severity. His constant absence from his dominions in the Holy Land, prevented his attention being given in any way to matters of law or justice.

In King John's time, and that of his son Henry III, the vigours of the Feudal and Forest Laws were so strictly kept up, that they occasioned numerous insurrections of the Barons; and, at last, were the means of extorting from those Sovereigns the two famous Charters of English Rights, *Magna Charta*, and *Charta de Foresta*. It was at Runnymead that Liberty began once more to rear her head from among the oppressions which had so long held her in subjection. Of these two memorable charters, the latter was calculated to redress many of the grievances attending the forest laws. The former contains among many clauses, of no small moment at the time, but now no longer important, others which justly entitle it to the name of *Great*, which it bears. As regards the administration of justice, among other provisions, it prohibited all delay and denial of it; it fixed the Court of Common Pleas at Westminster, that the suitors might no longer be obliged to follow the King's progress; it regulated the time and place for holding the inferior Courts; it confirmed and established the rights and

liberties of the city of London, and of all other cities, boroughs and towns in the Kingdom ; and lastly, it protected every individual of the nation in the free enjoyment of his life, liberty and property, unless lawfully forfeited by the judgment of his peers, or the law of the land.

3. FROM THE REIGN OF EDWARD I. TO THE REFORMATION.

It would be endless to enumerate all the regulations, which were sanctioned and confirmed by Edward I. called the English Justinian ; I will mention the most important only. Among others, he confirmed the great Charter and Charter of Forests ; he limited and confined the bounds of ecclesiastical jurisdiction, and thereby gave a mortal wound to the encroachments of the Pope ; he defined the limits of the several temporal Courts of the highest jurisdiction, and also of the inferior Courts, confining the latter to causes of small amount, according to their primitive institution ; he secured the property of the subject, by abolishing all taxes without the consent of the National council ; he first established a depository of the public records ; he reformed many abuses incident to tenures, and removed some of the restraints upon the alienation of land ; he reconstructed the administration of justice between man and man, in a manner which has continued nearly the same through all ages to this day, and lastly, he reduced all Wales to

the subjection, not only of the Crown, but in a great measure of the Laws of England, which work was completed afterwards in the reign of Henry VIII. From this time to that of Henry VII. the civil wars gave no leisure for further judicial improvements, and during the reign of that Prince, his ministers were more anxious to hunt out prosecutions upon old and forgotten laws, than to frame any new regulations.

4. FROM THE REFORMATION TO THE REVOLUTION IN 1688.

A new scene was now opened in Ecclesiastical affairs, the usurped power of the Pope being at this period for ever routed and destroyed (A. D. 1534); and the religious liberties of the nation being established on, I trust, an eternal basis; first, in the reign of Henry VIII., and afterwards in that of Elizabeth, both of whom, although it must be admitted they strained the royal Prerogative to an unprecedented height, and although many of their decrees were highly arbitrary and tyrannical, yet caused the Laws to be effectually administered, while the nation was respected abroad, and the people happy at home. All the grievances introduced by the Norman conquest were now gradually shaken off, and our Saxon constitution restored with considerable improvements. Many laws were passed of a salutary nature, abolishing many previous abuses, and thus tending to amend and strengthen our Institutions.

In the reign of King James I. were sown the

seeds of those dissensions, which afterwards produced so abundant a harvest of civil strife and bloodshed. This Prince, who was totally unable to wield the weighty sceptre of his powerful predecessor, imprudently exerted his prerogative on trifling occasions, and, not content with that, he took every opportunity of broaching doctrines unpalatable and unintelligible to his subjects on the Divine right of Kings.

In the meantime very little was done for the improvement of Justice, beyond the abolition of sanctuaries, the extension of the bankrupt laws, and the limitation of time within which actions were to be brought.

These discontents, smothered and stifled during the reign of James I., broke out openly in that of Charles I., whose misguided conduct, in attempting to revive some enormities, which had lain dormant during the life of his father, clouded the morning of his reign, and caused it to go down in blood. Yet, it must be admitted, that by the petition of right granted by this unhappy Monarch, and enacted for the redress of many of the then existing grievances, viz., the loans and benevolences extorted from the subject, and the Courts of Star Chamber and High Commission, the English constitution received great alteration and improvement. Unfortunately for him these concessions were not made with so good a grace as to conciliate the confidence of the people, and hence they entertained doubts of his sincerity.

Suspicion leading to resentment, and resentment being succeeded by open defiance and hostility, those calamities ensued, which every reflecting mind must consider a dark stain on the annals of our country.

During the Commonwealth, which succeeded, however vigorously the Protector made the administration of Justice to be felt throughout the realm, and although it was never at any period more respected than under Sir Matthew Hale, at that time the Chief Justice of the Court of King's Bench, yet we do not find that the state of the Laws received much consideration. The attention of Cromwell was absorbed in a pursuit more agreeable to his character, viz., in the conduct of foreign wars, and in quelling disturbances by the sword within his own dominions. At the restoration of King Charles II, the current of public opinion, which had long ebbed in a contrary direction, was setting in with great force towards monarchy; and the people were prepared quietly to submit to far more serious interference with their rights and privileges than they would have brooked during the turbulency and agitation preceding the civil wars. Nevertheless the encroachments of this profligate and arbitrary Monarch were attended with ultimate advantages; for to them we are indebted for that bulwark of our constitution, the Habeas Corpus Act. The Great Charter, indeed, declared, in general terms, that no man should be imprisoned contrary to Law; but the Habeas Corpus Act

pointed out to him an effectual mode of releasing himself; even though committed by the King in Council, and of punishing those who should unconstitutionally deprive him of his liberty. Other acts of importance were passed in this reign, among which were that for the abolition of feudal tenures, with all their oppressive appendages; the Navigation Act, (12 Charles 2, ch. 18), whereby a powerful stimulus was given to trade and commerce; the Statute of Frauds, (29 Charles 2, ch. 3, s. 17), which, by making void agreements respecting land, unless made in writing, rendered property secure, and the alienation or purchase of it attended with less risk, inasmuch as a record of them remained for a testimony; and many other statutes, having the amendment of the Law for their object, which demonstrate, that the people had at this time sufficient power residing in their own hands to assert their rights, if invaded by too great stretch of the monarchical power, and that the true balance between liberty and prerogative, since proved to be so invaluable a blessing to our country, had then begun to be established. This was fully proved not long after, when King James I. abdicated the throne, which introduces us to the last period of our legal history, viz.,

5. FROM THE REVOLUTION IN 1688 TO THE
PRESENT TIME.

During this period many Laws have passed, all confirming and perfecting the English constitution.

The Bill of Rights (1 William & Mary, sect. 2), the Toleration Act, (1 William & Mary, sect. 1, ch. 18), the Act for uniting the Kingdoms of England and Scotland, (5 Anne, ch. 8, A. D. 1707), the Act Regulating the Succession of the Crown, (12 & 13 William 3, ch. 2), the Act passed upon the subject of the Law of Libel, (32 George 3, ch. 60, A. D. 1792), called Mr. Fox's Act, although Lord Erskine was its real author: this statute has very properly extended the question from the mere fact of publication of a libel to the far more important and comprehensive consideration of its truth or falsehood; the Act making the Judges independent of the Sovereign, and irremovable, except through misconduct in their offices, which was one of the first statutes passed in the reign of King George III.; the Septennial Act, (1 George 1, st. 2, ch. 38), for extending the duration of the Parliament from three to seven years, a most salutary measure, inasmuch as the too great frequency of elections keeps the popular mind in excitement, while short Parliaments act prejudicially upon the dispatch of public business. The statute rendering the ministers of the Sovereign responsible to the Houses of Parliament, by enacting that no royal pardon should be a bar to Parliamentary impeachments (12 & 13 William 3, ch. 2); the regulation of trials by jury and the admission of witnesses for prisoners upon oath; all these measures have tended to protect the subject from the power of the Crown, while

on the other hand, the personal authority of the Sovereign arising from the necessity of a standing army, the appointment of those selected to fill every department of civil Government, the immense amount of the national debt, and the distribution of very numerous offices among those employed to collect the annual interest upon it in the shape of revenue, and lastly, the dispensation of public honours and distinctions; are all calculated to increase the influence of the Executive Power and to defend it from too great encroachments on its just prerogatives.

I have extended this Letter to a greater length than I had originally intended, but I was unwilling to sketch in too superficial a manner the masterly picture drawn by Blackstone of events highly interesting to every Englishwoman as well as Englishman. By giving you a description of them somewhat in detail, I have endeavoured to divest them, to a certain extent, of their technical and legal character. Let us here pause for a while, and look back upon the past, before we enter upon a period within the recollection of many of us, a period no less remarkable for legislation than any in our annals: the consideration of this I will reserve for my next and concluding Letter.

Yours, &c.

LETTER XXXII.

OF THE RISE, PROGRESS, AND GRADUAL
IMPROVEMENT OF THE LAWS OF ENGLAND,
CONTINUED.

I RESUME my pen for the last time, for the purpose of continuing and bringing to a close my narrative of the progress of our laws. You will remember, that peace is no less favourable to the growth of legislative improvements, than to the development of the Arts and Sciences. The discussion of measures having for their object the confirmation or extension of civil and social rights, is suspended or silenced amidst the din of arms. This reflection will satisfactorily account for the delay which has taken place in the case of many beneficial statutes, hereafter to be enumerated, between the period of their being proposed for public consideration, and that of their ultimately becoming Law.

Not long after Sir William Blackstone published his *Commentaries*, commenced that eventful contest, engaged in by our nation on behalf of Con-

stitutional Freedom, which terminated in the most brilliant success, after a series of arduous and protracted struggles.

It is but lately that England has publickly mourned at the obsequies of Him who fought her battles and gained her victories in the last of these wars. During their earlier progress we had unfortunately become involved in disputes with our countrymen, established in North America, which resulted in their total separation from us. I should not have here adverted to these disputes, had it not been that they arose in a great measure from a neglect of that fundamental principle of our Constitutional Law, that there can be no taxation where there is no representation: in other words, that no inhabitants of a country are to contribute to its expenses, unless they have a voice in its government. The descendants of those men who remonstrated against injustice thus attempted to be perpetrated, and maintained their rights by the sword, constitute now one of the most powerful nations upon the earth. Nevertheless, in a distant region, their indomitable energy, their vigorous intellect, their persevering industry, and their fervent love of freedom, manifest their Anglo-Saxon origin, and declare them to be still our brethren. May England and America ever stand side by side hereafter in front of that Sanctuary of Liberty, the champions of which they are consecrated by a common faith.

Returning to what is more immediately the subject-matter of our inquiry in the present letter, let us now take a view of some of those numerous alterations which have been made in our Laws since Blackstone wrote, a period of nearly ninety years ago. Many of these I have noticed in previous Letters: and I will now recapitulate a few of the most important of them; others to which I have not as yet had an opportunity of alluding, I will proceed also briefly to mention.

The dawn of the present century was rendered memorable as regards British Legislation, by the Act for the Union of England with Ireland, (39 & 40 George 3, ch. 67), a measure of which the policy cannot be for a moment doubted; but which has not hitherto been productive of that benefit, at all events to the Sister Kingdom, anticipated by the illustrious statesmen who introduced it. In vain has the Imperial Legislature devoted time, talent, and labour, the most earnest and unremitting, to a consideration of such causes as appear to distress and impoverish her condition. Be it the differences in Religious Creed; be it a demoralizing system of tenancy, which has hitherto paralysed the industrial efforts of her population; be it the draining of her native wealth by those proprietors, whose residence in more fortunate countries upon their own estates, results in happiness and comfort to those around them; be it a wayward improvidence of habits among the working

classes themselves ; or lastly, be it our own mismanagement of affairs not lying under our immediate and continual observation, nor subject to direct control : certain it is, that the advantages attending a fertile soil, a genial climate, and that ardour of character, which, when duly directed, must attain to the first place in every enterprise and walk through life, have failed hitherto to prevent Ireland from lagging behind, while England and Scotland have been pursuing their glorious and steady career of civilization and improvement.

If otherwise, how is it, that in a country so favoured by Nature, and having so many political privileges, those very laws which have been long exciting our admiration, are daily outraged and insulted with impunity, and even the sacred institution of juries is not unfrequently made a shield for crime ?

Not hand in hand with the Act of Union, but at a considerable interval subsequently (1829) came the Catholic Emancipation Act, (10 George 4, ch. 7), which admitted persons of that persuasion to the same civil rights, as Protestants, and relieved them from many penalties and restrictions to which they had been made liable by previous statutes. The subject of this momentous measure had been more or less mooted in Parliament at that time for fifty years : it had engaged the attention of Mr. Burke at an early period of his political career ; it was uniformly supported by Mr. Fox, and the difficulties

surrounding it were the main cause of Mr. Pitt's retirement from the Administration in 1801. The Catholic Emancipation Act was shortly afterwards followed by the Act for Reforming the Administration of the People, (2 William 4, ch. 45), by which the right of voting was largely extended in counties and boroughs. The provisions of this statute I have already described to you in detail in a former Letter (p. 37), where I gave you an account of the necessary qualifications of the electors and of those elected to Parliament.

Previously however to this period, the years 1806 and 1807, had been distinguished by two enactments, with which the name of Wilberforce is imperishably connected, namely the Acts for the Suppression of the Slave Trade (46 George 3, ch. 52; and 47 George 3, ch. 36). This iniquitous traffic was finally abolished twenty-seven years afterwards, (A. D. 1833), by the 3 & 4 William 4, ch. 73; when the Legislature voted twenty millions of pounds sterling to the slave owners as a compensation for the loss of their slaves, who were, however, to continue for a certain period as apprentices. But the venerable Statesman, the whole of whose long life was dedicated to the accomplishment of this great measure, did not live to see it finally and fully carried out. The Act passed the Legislature on the 28th August, 1833, and he died exactly one month previously, viz., on the 28th of July in the same year.

Among other statutes signalizing a later period, I must mention that for the Repeal of the Test and Corporation Acts (9 George 4, ch. 17), which opened the door of political rights to a numerous and highly respectable body of our countrymen, the Dissenters: the Acts for consolidating the Criminal Law, (7 & 8 George 4, ch. 29 and 30); and for abolishing capital punishment in the case of a great number of felonies: the New Poor Law Act, (4 & 5 William 4, ch. 76), by which the country was divided into new districts, and the management of the poor subjected to simpler and better arrangements, and more complete supervision. The Registration Act, for protecting and controlling the right of voting, (6 Victoria, ch. 18). The Act for the Abolition of Fines and Recoveries, (3 & 4 William 4, ch. 74), a most important and beneficial measure, resulting in the removal of a heavy clog upon the alienation of property. The County Court Acts, (9 & 10 Victoria, ch. 95, extended by 13 & 14 Victoria, ch. 61). The Acts for remodelling the proceedings in the Courts of Equity, long the Slough of despond to suitors, (15 & 16 Victoria, chap. 86); and, lastly, the Common Law Procedure Act, (15 & 16 Victoria, ch. 76), by which the entanglements and perplexities of the web of special pleading have been in a great measure set free, although much yet remains to be done before this branch of the law can become entitled to a renewal of public confidence and respect.

Here I ought properly to bring my remarks to a conclusion, having made you acquainted with the principal changes in the law, which have occurred from the period when Sir William Blackstone published his *Commentaries*, until the present day. But so rapidly are we advancing in political, no less than Physical Science, that almost before we have ceased to write, the present has become the past, and the future is to-day.

Need I mention as an illustration of the truth of this, that the text of *Commentaries upon a State of the Laws*, considered by their Author in his own time as approaching near perfection, is now well nigh obsolete? Nor has a restless spirit of innovation dictated these changes, but they are the deductions of an enlarged and discriminating experience, and result from a more comprehensive grasp of the human mind. Man, under the blessed influence of one of the most powerful instincts implanted in him by his Creator, is ever striving to better his condition. To foster and give encouragement to this principle, is a duty incumbent on human laws, absolute and universal.

If it is not entirely beyond the scope and province of these Letters to conjecture what will be done hereafter in our country as regards Constitutional Law, it may be anticipated that not only a considerable extension of that Parliamentary Franchise, which has been one of the subjects of our consideration, will ere long be conceded, as seems accordant with popular expectation, but that also a

general remodelling of the constituencies will take place at no very distant period. In a temperate and judicious extension of the franchise will be found a better prevention against bribery, than in the stringency of any penal law; while the more ample participation of civil rights will bind the attachment of the people more firmly to their Constitution.

On the other hand, a readjustment of the constituencies, if carried out in a national and impartial spirit, would remedy some imperfections which are admitted still to exist in our representation, notwithstanding many late improvements, and would tend materially to purify the system of elections. In such an event the opportunity might perhaps be taken, of giving a share of political privileges to certain interests, at present unrepresented.

Connected with a reconstruction of the Parliamentary Franchise is another problem of grave importance, to be solved hereafter, namely, that relating to our Colonies. It must be remembered that in contemplating the British Constitution at the present day, we stand on a very different eminence than that, from which it was beheld by Blackstone. In the interval since he wrote his Commentaries, the Empire has expanded in a degree, that the most sanguine believer in his country's destiny to glory, could never have dreamt of, much less foreseen. The gigantic proportions of our Eastern

Empire, our North American Colonies, an emporium of unlimited extent for our trade and manufactures; our islands in the West Indies; our military dependencies; and last, though not least, an immense continent in the Southern Hemisphere, receiving into its fertile and golden territory the constant and mighty rush of emigration from the mother country,—all, as it were, with one voice, proclaim, that no Laws ever existed more favourable than our own to that generous spirit of liberty, under which industry and enterprise are generated and flourish. Yet it cannot be denied, that the interests and prosperity of many of these countries, detached as they are from the seat of Government, are as yet very inadequately represented and very feebly promoted in the Imperial Legislature. Had Blackstone lived at the present day, his sagacious mind might have been well employed in examining how far a fuller measure, than they at present possess, of the political rights we prize so highly, might advantageously be communicated to those remote children of our country, who whithersoever they have gone forth, have carried with them, as their most cherished treasure, the laws and institutions under which they were born. He might have considered whether those appendages to a powerful kingdom which we call Colonies, should not now be bound to us by still nearer ties of a common interest, than are to be found in the identity of language or in the interchange

of commerce: whether anticipations, which presented themselves somewhat vaguely to the minds of some of the most eminent of England's statesmen at the close of the last century, might not now be realized, at a time, when the ocean barriers, considered insuperable in the time of Burke,* have been overleapt by the discoveries of science, and when England and her colonies lie almost along side of each other; in a word, whether the integral strength and unity of the Empire would not be materially consolidated and preserved by the representation of the Colonial interests in our own Parliament.

From alterations which may hereafter be made in the framework of our civil polity, the transition is easy and natural to the Statute Book itself.

Here it is probable, that a daily growing inconvenience will receive the early attention of the Legislature. The great mass of acts of Parliament, almost infinite in number and variety, the recollection of a small part of them impracticable to the most retentive memory, while they frequently baffle by their intricacy and prolixity the comprehension of those most practised in decyphering their sense, requires to be methodized and com-

* "Opposuit Natura," said the Orator in his celebrated Speech on Conciliation with America. See *Smith's Wealth of Nations*, Book 4, ch. 7, and *Life of Sir James Mackintosh*, by his Son, vol. 2, p. 382; also *Edinburgh Review*, vol. 34, p. 461.

pressed*. In a classification of them under separate and distinct heads, we might follow with advantage the example of the Code Napoleon, a work in every way worthy of the administrative powers of the Ruler whose name it bears. To no one could the superintendence and charge, laborious as they might be, of reducing our own acts of Parliament, particularly those relating to the Criminal Law, to a similar code, be better entrusted than to that distinguished lawyer, whose speeches and writings have not only always led public opinion on the subject of Law Reform, but have ever been considerably in advance of it. The talent and energy of a Brougham, employed upon a digest of the statutes, might well enhance the public gratitude already well earned by the County Court Act, a measure introduced by him as far back as the year 1830, in a speech of great eloquence and power, and although thwarted at first by violent opposition, and encountering strong prejudice, finally receiving the sanction of the Legislature amid general, I may say almost unanimous, approbation. In fields, where he first sowed the seed, while others stood aloof as from a visionary and wasteful labour, a

* Since the above passage was written, Lord St. Leonards has, on the first day of the present Session of Parliament, laid on the table of the House of Lords a bill relative to a digest of the Criminal Law, and the Lord Chancellor has subsequently (February 14, 1853), in a luminous speech introducing the measures of Law Reform proposed by Her Majesty's Government, announced one, having for its object the codification of the Statutes.

zealous multitude are thronging to reap the harvest, late indeed, but most abundant.

As a colleague with him, in the important work to which I have alluded, might well be associated an individual, eminent for his integrity, capacity, and learning, but of whose able services as a Judge, while in the full vigour of age and intellect, a single bodily infirmity has prematurely deprived his country. The mention of the name of Patteson will always command universal deference and respect.

While, however, hazarding a conjecture as to possible alterations in our Statute Book, whether as regards the condensing of existing materials or the insertion of new enactments, we must not forget to reflect upon, and to value to the fullest extent, those present and inestimable blessings which we possess under a Constitutional Monarchy, and under the protection of Laws, deriving their maxims and authority from the collective wisdom of ages.

I have, for your amusement and instruction, endeavoured, in a series of Letters founded upon the Commentaries of Blackstone, to give you a general idea of these laws and institutions, the envy of the world. We have together briefly traced them from their first rise among our Saxon ancestors, until their total eclipse at the Norman Conquest; whence they emerged after a time, and now beam upon us with the full light and warmth of liberty we enjoy at this hour. More than six hundred years have rolled away since the

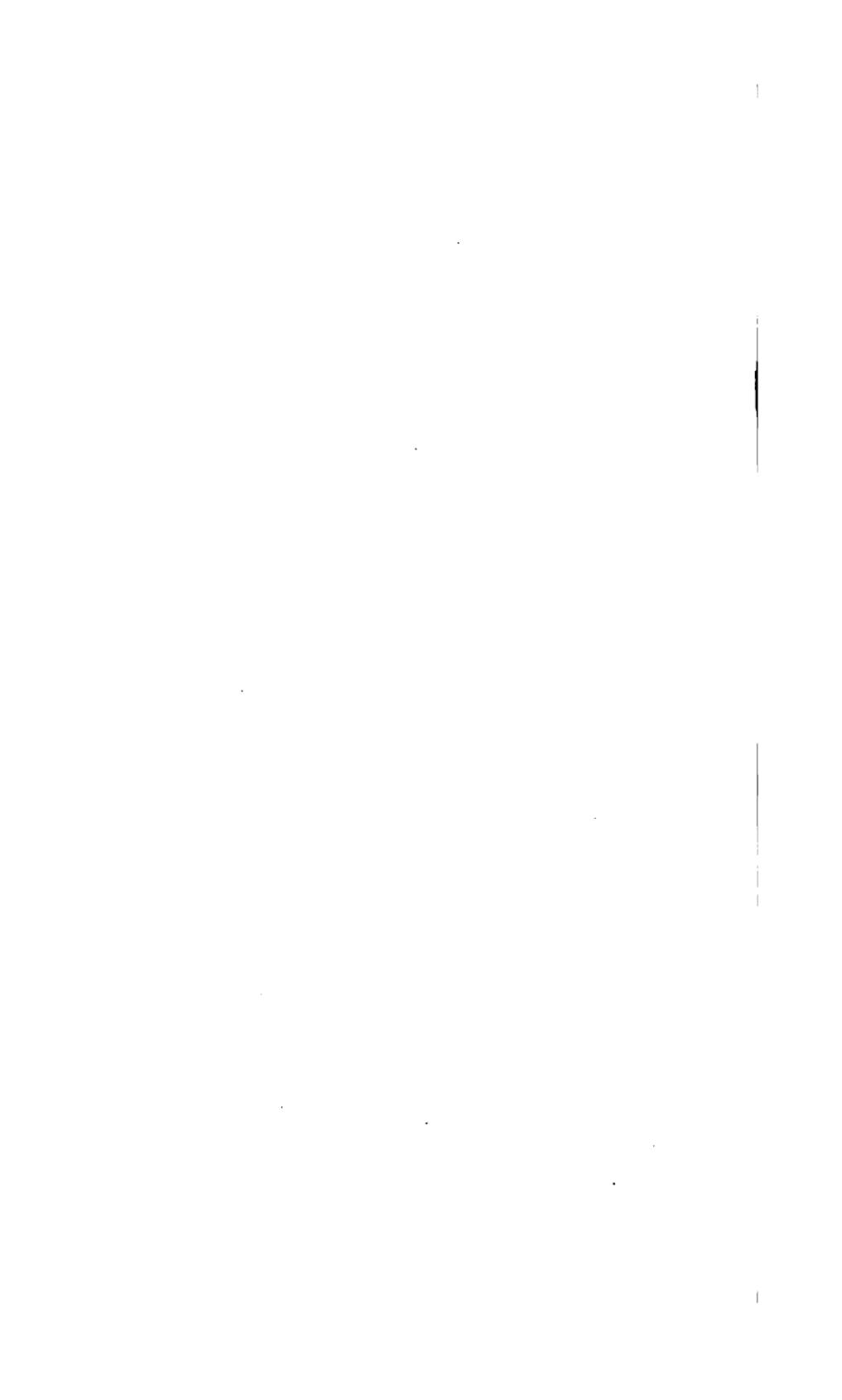
great Charter of our Liberties was signed. Since that period the onward progress of improvement has been gradual, as you have observed, and like the advancing tide of the ocean, at intervals almost imperceptible; but like that also, it has been irresistible and certain.

Of a Constitution so skilfully and ably contrived, so firmly constructed, and so highly finished, it is difficult to speak with that praise which is justly its due: the frequent and attentive contemplation of it will furnish its best panegyric. Faults it has still in some of its details, but the correction and removal of these, so far from endangering the fabric, will rather add to its symmetry and beauty.

In the system of our Jurisprudence especially, further reforms are still necessary, in order to simplify its administration, and lessen the delay, uncertainty, and expense which, notwithstanding the many remedial statutes I have enumerated to you, are still its proverbial attendants. There is some costly, but antiquated furniture about the Ecclesiastical Courts to be cleared away; there is the expediency of giving to the County Courts an equitable jurisdiction, to be discussed; there is the adoption of a more general system of arbitration to be considered in cases where the points at issue involve matters of account, or where suitors are unwilling to incur the expense and publicity of a trial; or, again, where legal difficulties encompass a dispute in such a manner, that the contending parties would rather refer its settlement to the

opinion of a Judge than submit the decision of it to a jury. These and many other important topics connected with the practice, but nowise affecting the established principles and groundwork of our Laws, press themselves very forcibly at the present moment upon the anxious attention of every Legislator and Lawyer. Let us approach the work of Reformation with caution, lest we undermine the foundations of the building, but, at the same time, prepared to sweep away with a firm hand, and without remorse, whatever rubbish encrusts its pillars or blocks up the avenues to its approach. By these means may the Structure of our Laws continue to be the object of our profound veneration and respect: may it be preserved in all its solidity and strength from this to all succeeding ages; and may the liberty of Britain be transmitted to posterity as their most precious birthright and noblest inheritance. But lest this very liberty should lead us to boast, let us remember at the same time with humility, while grateful to the All-wise Disposer of Events who has hitherto guarded our country and made it so to prosper, that in His hands are the well-being and security of States, and that we can in no way render ourselves more deserving of a continuance of the Divine favour, as a People, than by an earnest endeavour rightly to administer Truth and Justice, which are two of the most Glorious Attributes of God Himself.

Yours, &c.



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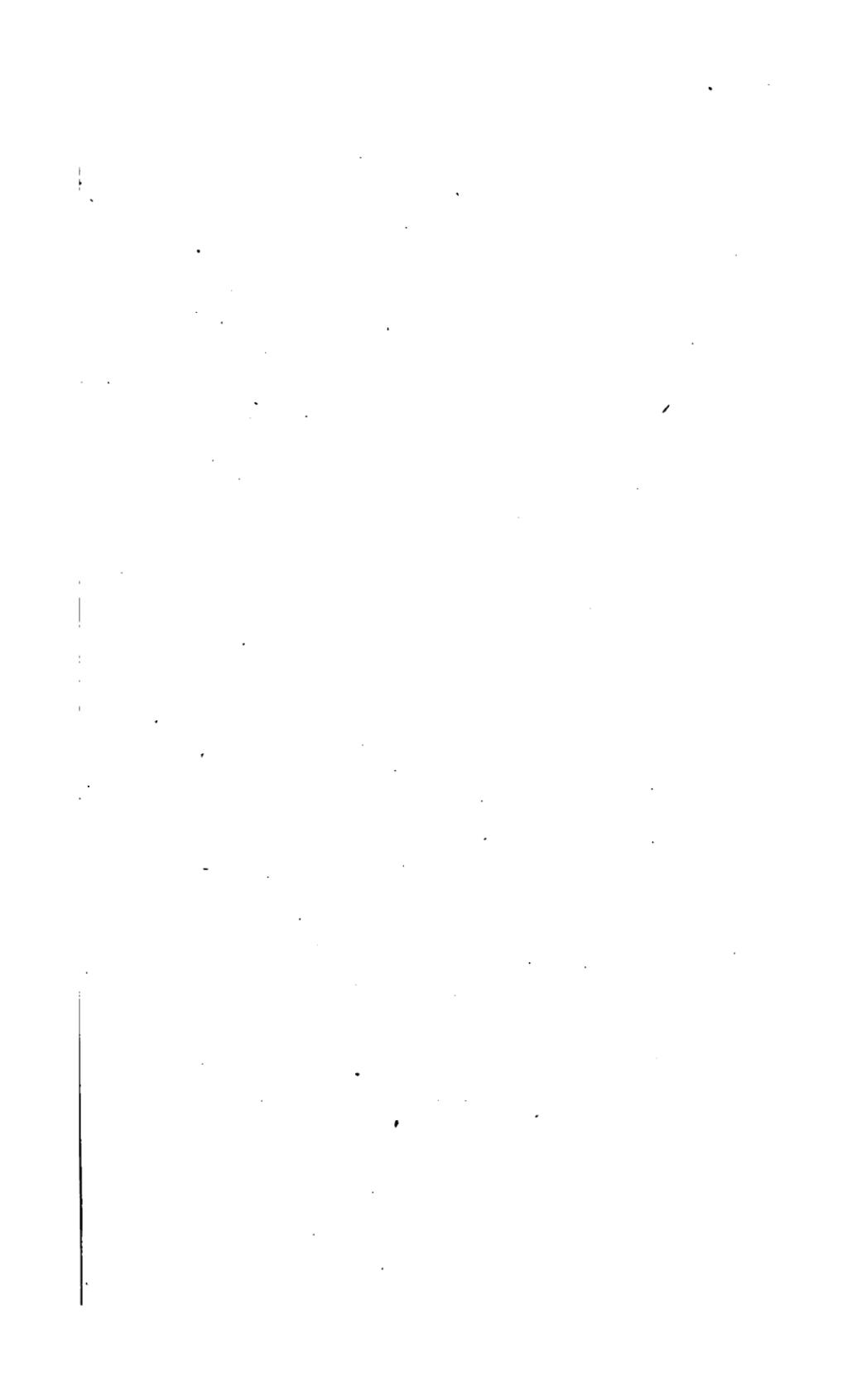
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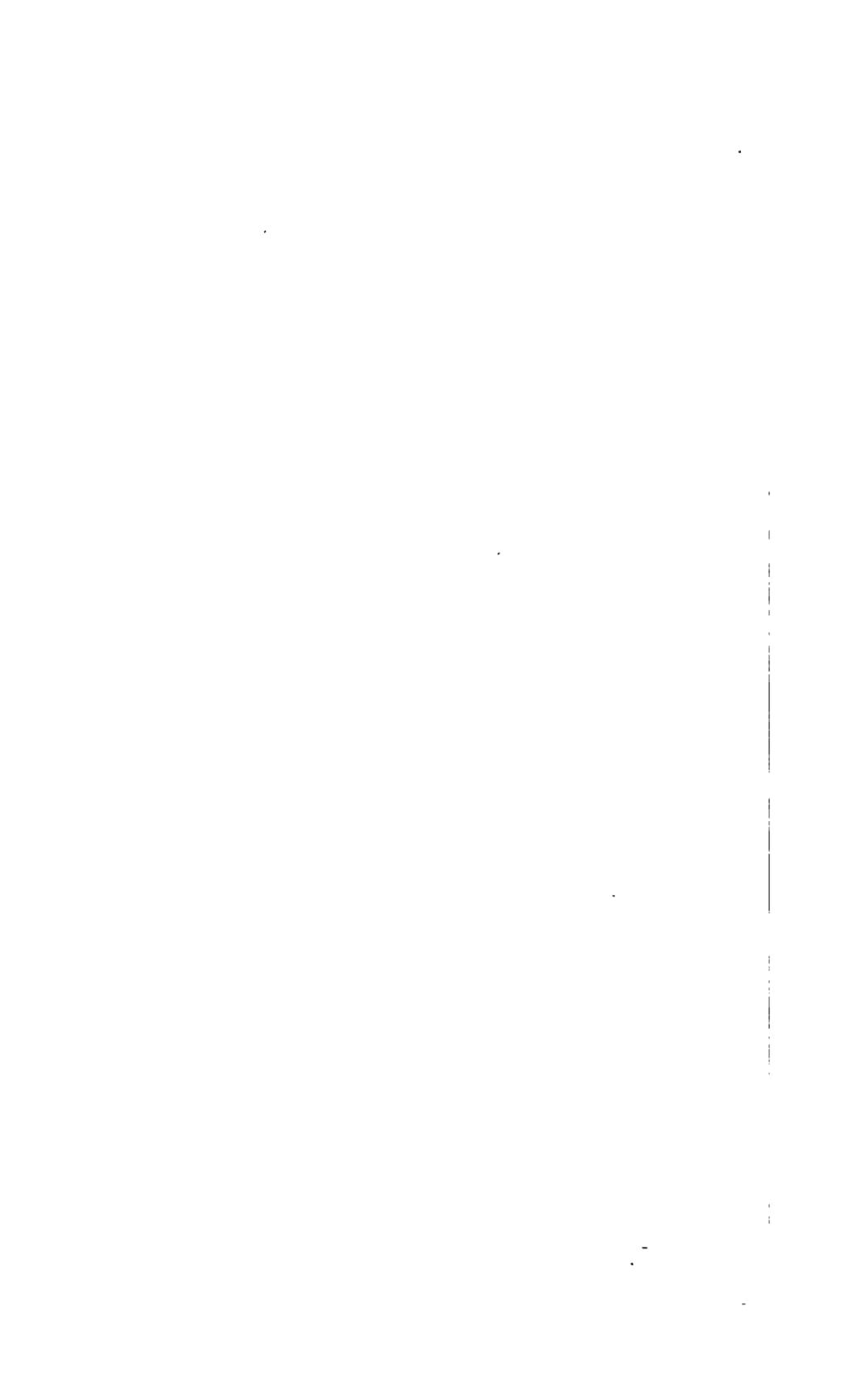
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